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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 490 (SHS)

5 ROBERT MENENDEZ,  
6 WAEL HANA, a/k/a "Will Hana,"  
and FRED DAIBES,

7 Defendants.

Trial

8 -----x

9 New York, N.Y.  
10 July 11, 2024  
10:00 a.m.

11  
12 Before:

13 HON. SIDNEY H. STEIN,

14 District Judge  
15 -and a Jury-

16 APPEARANCES

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Southern District of New York

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1 (Trial resumed; jury not present)

2 THE COURT: Good morning.

3 Mr. Weitzman, I understand you have something to  
4 raise.

5 MR. WEITZMAN: Yes, your Honor.

6 THE COURT: All right. Come to sidebar.

7 You may be seated in the courtroom.

8 (At sidebar)

9 THE COURT: Good morning, everybody.

10 MR. WEITZMAN: Good morning, your Honor.

11 Yesterday during summations, we witnessed some  
12 concerning behavior by two jurors. In particular, jurors No. 8  
13 and 9 were passing notes to each other during Mr. Fee's  
14 summation, and he was able to see that directly from where he  
15 was standing. I and my client also saw that they were showing  
16 notes on their notepad that they were taking to each other.

17 It raises a concern with us that jurors 8 and 9 are  
18 making substantive comments akin to deliberations, contrary to  
19 your instructions. What we're requesting, your Honor -- we're  
20 not asking for a curative instruction yet because I don't think  
21 we know anything yet. But we are requesting that there be an  
22 inquiry by your Honor with these two jurors.

23 THE COURT: OK. And what would you like that inquiry  
24 to be? That is, I take it, I've been informed that you've been  
25 passing notes back and forth, and you'll remember my

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1 instructions that you're not to begin deliberations in any  
2 fashion. Can you tell me what those notes are about?

3 MR. WEITZMAN: Yes.

4 THE COURT: Are they just personal asides, or do they  
5 deal with the substance of this trial? I think that would be  
6 the line of inquiry.

7 MR. WEITZMAN: So, the first thing I would say is I  
8 think our preference would be that it not be "I was informed,"  
9 because that rats out one party or another.

10 THE COURT: No, no.

11 MR. WEITZMAN: I think just I've observed or --

12 THE COURT: But I haven't.

13 MR. FEE: It has come to my attention? Mr. Monteleoni  
14 told me.

15 MR. MONTELEONI: How did I get involved in this? When  
16 do I get a chance to be heard?

17 THE COURT: This will be on the record, so please,  
18 gentlemen.

19 MR. WEITZMAN: It has come to my attention, I think,  
20 works.

21 THE COURT: And what do the parties think is the way I  
22 should describe the acceptable notes versus the unacceptable?  
23 The unacceptable clearly is commenting on the substance of the  
24 trial.

25 MR. WEITZMAN: I guess the question is whether you

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1 should describe it at all in those two fashions or whether you  
2 should just leave it open-ended -- would you share with me what  
3 notes you were sharing with each other, both in your notepads  
4 and passing back and forth?

5 MR. MONTELEONI: Your Honor, we oppose --

6 THE COURT: Wait a minute. On the notepads, they're  
7 certainly entitled to take notes.

8 MR. WEITZMAN: But what they were doing was showing  
9 their notepads to each other, showing the notes that they were  
10 writing.

11 If I may just say one thing, your Honor?

12 THE COURT: Yes.

13 MR. WEITZMAN: The reason we didn't raise this  
14 yesterday is because we wanted to research this overnight, and  
15 the case is *United States v. Haynes*, 729 F.3d 178 (2d Cir.  
16 2013). And the court said that there's a duty to inquire upon  
17 a credible allegation that jurors may be deliberating in  
18 advance of the jury instructions, contrary to the court's  
19 permission.

20 THE COURT: Yes. Mr. Monteleoni.

21 MR. MONTELEONI: Yes.

22 So, we oppose an inquiry at this time because, though  
23 Mr. -- we didn't understand this until we came into court a few  
24 minutes ago so we haven't had the benefit of looking at that  
25 case. We understand that, obviously, any inquiry into the

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1 internal conduct of the jury itself raises significant  
2 questions about the integrity of the jury, and there might be  
3 circumstances where that's appropriate, but those circumstances  
4 are very carefully limited, and we request time to consult with  
5 our appeals unit about the possible implications of this. We  
6 don't think that any of this would have to happen until, any  
7 inquiry would have to happen before the jury begins  
8 deliberating.

9 THE COURT: I think that's right.

10 MR. MONTELEONI: Obviously we have no objection if the  
11 Court wishes to give a reminder, not particularly prompted by  
12 anything, that the jurors' notes are intended to be for their  
13 own personal use and that they're not supposed to show notes or  
14 anything like that. But we want to make sure that we  
15 understand that conducting any sort of inquiry and the form of  
16 the inquiry is not going to cause a problem with the integrity  
17 of the jury, if there is one.

18 THE COURT: Yes. I think that makes sense. If anyone  
19 has additional cases, let me know, let my deputy know. We'll  
20 check out that case. I think we can wait for your appeals unit  
21 to weigh in.

22 MR. WEITZMAN: We don't have an objection to that. We  
23 don't think it needs to be in the middle of anybody's closing.

24 THE COURT: But I will tell them, I remind you that  
25 notes are for your own use only, and I may remind them as to

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1 why I said that, because if it's written, then therefore it's  
2 true. But that's not necessarily true. And I'll also tell  
3 them that their deliberations are not to begin until I tell  
4 them.

5 All right. Well, thank you for bringing that to my  
6 attention. I actually did not see that.

7 MR. WEITZMAN: Thank you, your Honor.

8 THE COURT: Assuming it did happen.

9 MR. WEITZMAN: Yes.

10 THE COURT: The jury is here.

11 (In open court)

12 THE COURT: The jury is here. We'll bring the jury  
13 in.

14 What's your estimate, Mr. De Castro?

15 MR de CASTRO: 30 to 40 minutes, probably 30.

16 THE COURT: Thank you.

17 Is the estimate for the government still about two  
18 hours?

19 We'll find out.

20 (Jury present)

21 THE COURT: Please be seated in the courtroom.

22 Ladies and gentlemen, we're about to have Mr. De  
23 Castro continue and conclude with his summation on behalf of  
24 Mr. Daibes, but I did want to remind you that for those of you  
25 who are taking notes, the notes are for your own use only.

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1 They are not to be shared with others. They are not to be  
2 passed between yourselves, and you know why I told you that.  
3 Because the research -- I don't know whether it's sociological  
4 or psychological research, whatever it is -- shows that people  
5 tend to put more than trust and faith in something that's  
6 written down. So we don't want a juror going to the rest of  
7 the jury and saying, I know this is what that person said  
8 during trial; I wrote it down.

9 As one of the lawyers said, you'll have access to and  
10 the ability to get any of the transcripts during your  
11 deliberations. So I repeat that the notes are for your use  
12 only, and they're not to be shown to others and passed around.

13 In line with that, your deliberations should not  
14 begin -- must not begin -- until after these summations are  
15 concluded and after I've given you my charge on the law, and  
16 then I will tell you to deliberate. But don't talk amongst  
17 yourselves -- in groups of two or everyone; it doesn't matter.  
18 Don't talk about what you've heard or seen during this trial,  
19 and you know all of that already.

20 Mr. De Castro, you're concluding the remainder of your  
21 summation, sir. Welcome.

22 MR de CASTRO: Thank you, Judge.

23 Good morning, everybody.

24 Yesterday, we talked about, we finished up talking  
25 about Egypt. I'm going to turn now to the District of New



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1 Jersey part of the case. And like Egypt, everything I said in  
2 my opening statement relating to this part of the case,  
3 involving the appointment of the United States Attorney for the  
4 District of New Jersey, came to pass.

5 What did the evidence show as it related to this  
6 chapter of the case?

7 Before 2018, Fred was under investigation by the  
8 United States Attorney's Office for the District of New Jersey.  
9 It was related to a bank in which he was a majority  
10 shareholder. In 2018, his lawyer at the time made a  
11 presentation to the U.S. Attorney's Office, the line  
12 prosecutors -- I think you heard that during the trial -- the  
13 people handling the case, as to why they shouldn't bring the  
14 case. They were unsuccessful, and in 2018, Mr. Daibes was  
15 charged by that office.

16 Now, around that time, Philip Sellinger, a lawyer in  
17 private practice, who at one point wanted to become the U.S.  
18 Attorney for New Jersey, was golfing with his long-time friend,  
19 Senator Menendez. It was a social meeting. Mr. Sellinger had  
20 been a big supporter of Senator Menendez through fund-raisers  
21 and working on his campaigns over the years. They were  
22 golfing, not working. They were socializing, not working.

23 Yes, business sometimes gets done on the golf course,  
24 but Sellinger doesn't say that that's what this was. They were  
25 having a social outing. And Bob Menendez said he was

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1 frustrated with how the U.S. Attorney's Office was treating his  
2 friend, Fred Daibes. Nothing more than a friend venting  
3 frustration about how he perceived his friend was being  
4 treated. And at the time who was Philip Sellinger? I said it  
5 before. He was a person in private practice. He was a  
6 partner, a managing partner at Greenberg Traurig.

7 Fast forward to 2020, when Joe Biden is elected.  
8 Years have gone by. Philip Sellinger knows that there will be  
9 an opening for the U.S. Attorney position in the District of  
10 New Jersey. Mr. Sellinger reaches out to Senator Menendez to  
11 express his interest, as do others. Now, it started with a  
12 meeting in December of 2021 at the senator's office in D.C.  
13 between Philip Sellinger and Senator Menendez. It was an  
14 interview of sorts, a discussion of Mr. Sellinger's potential  
15 nomination to be U.S. Attorney. They discussed Mr. Sellinger's  
16 priorities, his vision, his leadership views, should he become  
17 nominated and ultimately get the job. Nominated, then the  
18 White House has to decide and then you get the job, after the  
19 Senate acts on your nomination.

20 They discussed all those priorities, and that was the  
21 focus of the meeting. And at the end, Senator Menendez  
22 mentioned, according to Mr. Sellinger -- right -- what he had  
23 already mentioned years ago about his long-time friend,  
24 Mr. Daibes, and how he felt that Fred was being treated  
25 unfairly by the U.S. Attorney's Office. After all, the case,

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1 two years later, was still open.

2 Mr. Sellinger did not feel like the senator had done  
3 anything improper. He didn't feel pressured in any way. He  
4 didn't feel that he was being told that his nomination was  
5 conditioned on looking into Fred's case, and you know that  
6 because Mr. Sellinger told you that. You also know that  
7 because if that was the case, Mr. Sellinger would never call  
8 Senator Menendez a couple days later and tell him that he  
9 realized he might have a potential conflict with Mr. Daibes.  
10 He wouldn't have told him that he may be recused from the  
11 Daibes matter because he had remembered that he had worked on a  
12 civil case that was tangentially related and adverse to Fred.

13 What was Senator Menendez's response? Nothing. No  
14 reaction. Nothing big, nothing memorable to Mr. Sellinger. No  
15 further discussion. He didn't try to ask him to ignore this  
16 potential conflict or to look the other way. He didn't say  
17 anything like: That's too bad, Phil. Maybe there are other  
18 positions in government for you.

19 He didn't try and change his mind whatsoever.

20 After this meeting with Philip Sellinger, Senator  
21 Menendez was still determining who to present to President  
22 Biden for the position. All senators received guidance  
23 regarding what kind of candidates they were looking for. The  
24 White House was strongly urging senators to take into  
25 consideration diversity, the need for diversity in their

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1 selections. This is the White House memo. You see it in  
2 Government Exhibit A-114PH. Paragraph 2 here is zoomed in for  
3 you. You can read the whole thing, but I'll highlight for you  
4 what it says: President Biden is eager to nominate individuals  
5 who reflect the best of America and who look like America.

6 And what does the evidence show?

7 Rather than nominate a qualified white male to the  
8 position -- same old, same old -- Senator Menendez chose to  
9 make a potentially historic nomination, one that was in line  
10 with the White House's guidance. He put forward Esther Suarez  
11 for consideration by the White House.

12 Why did he do that? Not only because of the White  
13 House memo but also at the urging of his oldest friend and the  
14 best man at his wedding, Donald Scarinci. Esther Suarez had  
15 worked for Mr. Scarinci in the past, and he was a strong  
16 supporter of Ms. Suarez. And Ms. Suarez was a qualified  
17 choice. She was the Hudson County prosecutor. She led that  
18 entire office of prosecutors. She had previously been a judge.  
19 She had already gone through a vigorous vetting process in the  
20 New Jersey State Senate. She was endorsed by the Hudson County  
21 Prosecutors Association, and she was Latina.

22 And if Mr. Daibes's case was so important to Senator  
23 Menendez and it was driving this entire decision, where is the  
24 evidence that Senator Menendez or anyone spoke to Ms. Suarez  
25 about the Daibes case? There is none. But her nomination ran

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1 into roadblocks. The White House was not going to approve her  
2 for nomination.

3 So we're back to Mr. Sellinger as the potential  
4 nominee, someone that didn't check the diversity box, that's  
5 for sure, but he was qualified and he would probably survive  
6 vetting. He was also someone who believed in having a diverse  
7 power structure at the U.S. Attorney's Office. He testified to  
8 that. And that was important.

9 And that brings us to the most important evidence in  
10 this chapter of the case, the claim that Mr. Sellinger told  
11 Mr. Soliman that he would not have to recuse himself. You saw  
12 a slide that Mr. Fee put up during his summation regarding  
13 this, so I'm going to talk to you a little bit about this  
14 communication.

15 Without that fact, that testimony from Mr. Soliman,  
16 they have no evidence that Mr. Sellinger was recommended on the  
17 basis of whether he would be able to look at the Daibes case.  
18 This piece of the case completely turns on Mr. Soliman's  
19 testimony and his message to the senator. But keep in mind  
20 that it's directly at odds with what Mr. Sellinger told you.  
21 But I'm confident that you're going to use your common sense to  
22 evaluate this contradictory evidence.

23 And how are you going to evaluate it?

24 It makes no sense that Phil Sellinger told Mr. Soliman  
25 that he was not going to be recused. Therefore, that message

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1 that we've heard so much about and you saw and its  
2 interpretation by the government that you will be comfortable  
3 with the answer and the call Soliman claimed to have had with  
4 the senator is simply wrong.

5 Why doesn't it make sense and why was Soliman  
6 mistaken? How would Sellinger have checked with the Department  
7 of Justice regarding recusal when he wasn't even the nominee  
8 yet? He didn't work at the U.S. Attorney's Office. He was  
9 still in private practice. And there was no testimony that  
10 prior to him being nominated he contacted anyone at the  
11 Department of Justice regarding conflicts. And the senator  
12 knew this because Mr. Sellinger told you that he explained, as  
13 he testified, he explained the reason and process to the  
14 senator on their December call, explained that he may have to  
15 recuse if he became part of the Department of Justice.

16 Remember, it's a selection to nominate. That goes to  
17 President Biden. President Biden decides. Then it goes -- if  
18 he approves it, then it goes to the Senate to be considered.  
19 You don't have the job. It's you have the possibility of a  
20 job. And so he wouldn't have said that to him, and that's --  
21 and on this issue, Mr. Soliman was simply not a reliable  
22 witness. Not because he's a bad person or he was intentionally  
23 lying to you. I'm not saying that. Certain parts of his  
24 testimony just didn't make sense, and he seems to have been  
25 just mistaken and unclear on timing. After all, he was

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1     testifying about things that happened years ago, and he told  
2     you that he works seven days a week and spends a great deal of  
3     time on the phone. That's why he doesn't remember much about  
4     specifics. Soliman told you it could be recusal or just about  
5     Mr. Sellinger's background. The timing tells you it was  
6     background, so the whole premise on the recusal piece is wrong.

7             So, the senator called Mr. Sellinger to congratulate  
8     him. He was going to recommend him to the president. Senator  
9     Menendez doesn't remind him about Daibes and their prior  
10    conversations. He doesn't say I understand from Soliman that  
11    you're not going to recuse yourself. You didn't hear any  
12    testimony like that, because Soliman's testimony about that is  
13    simply not believable. It's irreconcilable with  
14    Mr. Sellinger's testimony and recollection. And that makes  
15    sense. Why would Sellinger bring up that conflict? He would  
16    have only checked if he got the job, he got through the vetting  
17    process, he got nominated and then he was approved by the  
18    Senate, and the Senator Menendez knows that. Sellinger, after  
19    all, is a sworn member of the Department of Justice. He has no  
20    reason to lie to you. He would have every reason to remember  
21    such an important conversation.

22            You also heard evidence regarding the lunch  
23    Mr. Soliman had with Mr. Sellinger in which the senator is  
24    alleged to have asked Mr. Soliman to find out why Sellinger had  
25    been recused on the Daibes matter. Remember, Soliman had

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1 called Mr. Sellinger about a friend prior to that lunch. He  
2 called him about a friend of his who was a victim of identity  
3 theft. He had wanted to talk to him about that. He testified  
4 to that. They set up lunch to catch up. Mr. Soliman told  
5 Menendez that he was having lunch with Sellinger. Menendez  
6 wasn't asking him to go see Phil Sellinger. You didn't hear  
7 any of that testimony. He didn't say find an excuse to meet  
8 with Paul -- Phil, sorry. Sellinger would've had no idea what  
9 Soliman would want to talk to him about at that point, other  
10 than his friend who was the victim of identity theft. And  
11 after all, Mr. Sellinger warned him, as he had warned many  
12 others that were connected to public officials, that he was  
13 forced to distance himself from them and couldn't talk about  
14 any matters pending in his office. But remember this: that no  
15 one -- no one -- testified at all in this trial that they felt  
16 Mr. Menendez ever asked them to do anything improper.

17 Now, let me take a minute to say something about the  
18 phone-call evidence that you've seen. You've seen a lot of it  
19 on the charts, and I submit to you that the government wants  
20 you to speculate and assume as to what Mr. Daibes and Senator  
21 Menendez spoke about over the phone. I know Mr. Lustberg  
22 talked to you a little bit about this yesterday. But in  
23 reality, the government doesn't know any more about what was  
24 discussed than you do. They want you to assume, speculate,  
25 that when Senator Menendez called Mr. Daibes they must talking



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1 about something illicit. But where is the proof of that? It's  
2 certainly not in the evidence. There was certainly no text  
3 about the substance of their conversations after and certainly  
4 nothing criminal.

5 The government presented evidence that they were often  
6 communicating over encrypted messaging apps. Right? Like  
7 WhatsApp, Signal, and they pointed it out. It's in the charts.  
8 It's in the charts for a reason. What's that reason? It's an  
9 argument. It's an argument that they're using encrypted apps  
10 to hide. Remember that one bullet point? Secrecy. OK? These  
11 apps are designed to protect one's privacy, and WhatsApp and  
12 Signal are used widely. Witnesses have testified to that. It  
13 doesn't mean anything.

14 And if they were speaking and texting using encrypted  
15 apps, shouldn't they feel comfortable and open to communicate  
16 everything about a bribery scheme? Where is the message  
17 saying: I'm paying you to make my case go away; where are my  
18 results? Where is that message?

19 Mr. Monteleoni said, in his summation, pointing to a  
20 record of a phone call between Fred Daibes and Robert Menendez,  
21 this was him telling Daibes that he's trying to influence the  
22 case. That's the promise of the official act.

23 Well, is he, is the government referring to a  
24 recording or something? Where is the testimony about the words  
25 spoken in that call? There isn't, and that's because they want

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1 you to assume it. They want you to fill in the gaps.

2 So what happened with Mr. Daibes's case?

3 It was handled in the ordinary course. Mr. Sellinger  
4 was recused. Mr. Khanna was in charge, and Mr. Daibes's  
5 lawyers worked hard and advocated for a resolution of the case  
6 short of trial.

7 Did Mr. Menendez know what was going on in  
8 Mr. Daibes's case? Of course. He certainly knew what was  
9 happening with his friend of 40 years. But he did not cross  
10 any lines. Mr. Menendez did not speak further to Mr.  
11 Sellinger. Mr. Menendez did not speak to Mr. Khanna about the  
12 Daibes case at all. The matter was handled and resolved on the  
13 merits between the U.S. Attorney's Office and Mr. Daibes. They  
14 resolved their matter based on the strengths and weaknesses of  
15 that case, just like any other criminal case. Mr. Daibes  
16 agreed to plead guilty with the promise of a sentence of  
17 probation. Menendez had nothing to do with the disposition.

18 If Mr. Daibes had bribed Mr. Menendez to make sure  
19 things had gotten done or fixed on his criminal case, why would  
20 the senator talk to Mr. Daibes's lawyer and admonish him for  
21 not being aggressive enough? There's a stipulation in evidence  
22 that the government pointed to in their summation, and you'll  
23 have it. Why would Senator Menendez want to talk to  
24 Mr. Daibes's lawyer at all? You have to ask yourselves these  
25 kinds of questions. If Mr. Daibes had bribed Senator Menendez,

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1 wouldn't the call be coming from Fred to Senator Menendez,  
2 saying, hey, I paid you to make this go away, it isn't going  
3 away?

4 Why would there be any conversations between  
5 Mr. Menendez and Mr. Daibes's counsel? It doesn't make any  
6 sense.

7 Now, in my opening statement, I told you to listen to  
8 the evidence related to this part of the case and ask  
9 yourselves if Mr. Daibes paid the senator, what did he pay for?  
10 What benefit did he actually receive? And were the results  
11 consistent with a bribe? Why would Mr. Daibes, a friend of  
12 more than 30 years, have to bribe his friend at all?

13 As I said earlier, everything I said about this part  
14 of the case in my opening statement has come to pass. I told  
15 you that there would be no evidence that the senator influenced  
16 or pressured prosecutors in New Jersey to treat Mr. Daibes more  
17 favorable than anyone else. There's been no evidence of that.

18 I told you that the evidence would show that  
19 Mr. Daibes's New Jersey case was handled and is still being  
20 handled like any other case. And that is what the evidence  
21 showed.

22 I told you at most the evidence would show that  
23 Senator Menendez was concerned about his friend of over 30  
24 years like anyone would be, and that is what the evidence  
25 showed.

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1 I told you that the government would not be able to  
2 show you any corrupt intent by Mr. Daibes or any official  
3 actions tied to any payment to Senator Menendez relating to the  
4 U.S. Attorney's Office part of the case.

5 And I'll ask again, as I asked earlier yesterday, what  
6 does the government claim Mr. Daibes gave the senator to  
7 intervene in his District of New Jersey case? Did he give him  
8 gold? Did he give him cash? Did he give him something else of  
9 value? If you don't know, then you are not convinced, and he  
10 is not guilty.

11 Now, finally, to the last chapter or part of the case  
12 in which Mr. Daibes is charged, and that's the Qatar part of  
13 the case. Like the other parts of the case, everything I said  
14 in my opening has also come to pass. I told you that the  
15 evidence would show that the senator made an introduction.  
16 That's in the evidence, and you can see it. Nothing secretive  
17 about it, a message in which he provides Mr. Daibes's contact  
18 information. Take a look at the introduction. It's in  
19 evidence. It's Government Exhibit A112-PH1. He knows that  
20 Mr. Daibes needs financing for a huge project in his state, and  
21 he was told that the Qataris were looking for an investment  
22 that would bring many jobs and opportunities and tax dollars to  
23 New Jersey. Senator Menendez introduced Mr. Daibes to a member  
24 of the Qatari royal family that he learned was interested in  
25 making investments in New Jersey, the state that he has

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1 represented in the U.S. Congress for 31 years and as a senator  
2 since 2006. He made an introduction. That's not a crime.

3 I also told you in my opening that the evidence would  
4 show that the sultan then turned it over to the sultan's  
5 investment team and Mr. Daibes turned it over to Daibes's  
6 investment team. And that's what the evidence showed. The  
7 sultan was represented by an investment company called Heritage  
8 Advisors. Heritage employees are based in London. A couple of  
9 them are Shaun Doherty and Andrew Longmate.

10 The evidence showed that the sultan's and Daibes's  
11 team shared information over eight months, and Heritage made a  
12 decision to invest based on nothing but the results of their  
13 due diligence. Nothing more. There's no evidence that the  
14 decision to invest or continue to be in business with  
15 Mr. Daibes was the result of any involvement by the senator  
16 other than that introduction. You can see in the evidence the  
17 due diligence that went back and forth between them.

18 Now, why would they do any of that if they really just  
19 wanted a U.S. senator in their camp? Invest tens of millions  
20 and potentially hundreds of millions of dollars just to have  
21 the support of a senator. The Qataris didn't need any more  
22 praise from the U.S. government, and they certainly weren't  
23 going to trade it for hundreds of millions in investment in  
24 Mr. Daibes's real estate development in New Jersey. The  
25 Qataris already permitted the U.S. to have the largest U.S. Air

O7bWmen1

1 Force base in the Middle East in their country.

2 Take a look at the evidence related to the due  
3 diligence and the timeline of the deal. It shows you that the  
4 parties engaged in the normal due diligence you would expect to  
5 see in any large real estate transaction. Nothing criminal.  
6 You can certainly look at the government's chart, but look at  
7 the documents I put up when I briefly cross-examined Mr. Van  
8 Wie on the chart as well as other documents that are in  
9 evidence. You can look at the letter of intent at Government  
10 Exhibit 4F-17. But make sure to also look at the work done  
11 leading up to the signing of that letter of intent in May of  
12 2022.

13 Look at Government Exhibit 4F-15 and Government  
14 Exhibit D312, where the Heritage team communicates with the  
15 Daibes team about how they've hired counsel in connection with  
16 the deal to go forward; that their team has looked over all the  
17 numbers and has decided to go forward.

18 Look at Government Exhibit 4F-31. At the bottom of  
19 that, it has the deck regarding the development. You can go  
20 through all the specifications of this massive development  
21 project. And ask yourselves was this the result of some  
22 bribery or the result of aboveboard due diligence? There's no  
23 secrecy here.

24 Take a look at Government Exhibit 4F-7. These were  
25 internal Heritage text messages, exchanges with Al Thawadi,

O7bWmen1

1 where Al Thawadi tells Heritage to meet with Fred to keep the  
2 momentum going. The Qataris were excited about the investment  
3 and the progress that's being made. You don't see any internal  
4 emails or texts talking about Senator Menendez or talking about  
5 Fred's connections to Senator Menendez, because those have  
6 nothing to do with this deal.

7 Take a look at Government Exhibit 4F-33. This is a  
8 memo from the sultan's due diligence, his adviser team to the  
9 sultan regarding the deal with Mr. Daibes. It tells you why  
10 they're investing with Mr. Daibes. It couldn't be clearer.  
11 And it also couldn't be clearer that Senator Menendez has  
12 nothing to do with it.

13 If you look at paragraph 2, which is, I think, pulled  
14 out here for you:

15 The property lies just over the Hudson River from  
16 Manhattan, lying adjacent to the lower one-third of Central  
17 Park as you look at Manhattan, with exciting opportunities to  
18 develop a mixed-use scheme of up a four 60-plus story towers of  
19 mixed-use residential, retail and F&B. With an intended ferry  
20 service to Manhattan the development will, if successful, be a  
21 landmark first-of-its-kind development in Bergen County, highly  
22 visible from Manhattan.

23 And the next page, the last two paragraphs, describes  
24 how serious they were. After making a huge payment in  
25 connection with the letter of intent, they engage Greenberg

O7bWmen1

1 Traurig, a leader in New York real estate law, to represent  
2 them in the project. Heritage entering into the deal with  
3 Mr. Daibes had nothing to do with bribery and everything to do  
4 with the recognition that the investment would be extremely  
5 lucrative for them. And it goes without saying that the  
6 development would bring jobs and tremendous tax revenues to  
7 Edgewater, New Jersey.

8           There's no evidence of bribery. In fact, no witnesses  
9 with firsthand knowledge of this project could testify and tie  
10 this investment to any bribery scheme. And the official acts  
11 the government claims Mr. Daibes paid for had no effect and  
12 were not connected in any way to Mr. Daibes's project.  
13 Certainly the senator issued press releases regarding the  
14 country of Qatar. It was not about this investment or any  
15 investments in New Jersey. The government pointed to advanced  
16 copy that Mr. Daibes received of a press release. Take a look  
17 at how advanced a copy it is. It's the same day.

18           (Continued on next page)



O7B3MEN2

Summation - De Castro

1 MR. DE CASTRO: This is the same day. Then there was  
2 as resolutions sponsored by two other senators where the entire  
3 Senate thanked Qatar for its support getting our troops out of  
4 Afghanistan. This had nothing doing with Mr. Daibes' project.  
5 The United States government was thanking the Qataris for  
6 helping bring members of our Armed Forces home safe. And like,  
7 Egypt, you will have no way of connecting any gold, cash, or  
8 things of value going to the senator for any official actions  
9 related to Qatar.

10 I'll show you and ask again. Did the evidence show  
11 when this gold bar was given to Nadine or Bob Menendez? Did  
12 the evidence show whether this gold bar was given to Nadine or  
13 Bob Menendez before or after Mr. Daibes was introduced to the  
14 Qataris? Did the evidence show whether this gold bar was given  
15 to Nadine or Bob Menendez before or after Mr. Daibes and the  
16 Qataris finished their due diligence and signed a letter of  
17 intent? Or isn't it just as likely that it was a gift to  
18 cultivate friendship or a gift to build goodwill.

19 If you don't know, then you are not convinced, and he  
20 is not guilty.

21 Did the evidence show when the envelope was given to  
22 Nadine or Bob Menendez? Did the evidence show if this envelope  
23 was given to Nadine or Bob Menendez before or after Mr. Daibes  
24 was introduced to the Qataris? Did the evidence show whether  
25 this envelope was given to Nadine or Bob Menendez before or

O7B3MEN2

Summation - De Castro

1 after Mr. Daibes and the Qataris finished that due diligence  
2 and signed a letter of intent? Or is it just as likely that it  
3 was a gift to cultivate friendship or a gift to build goodwill.

4 You don't know, then you are not convinced, and he's  
5 not guilty.

6 One second. Let me grab a water.

7 Now, what was this gold and cash for? You heard from  
8 John Moldovan that Mr. Daibes is known for his generosity. You  
9 heard from Jamela Maali that Fred Daibes is known for his  
10 generosity. You heard from Vasken Khoroizian that Mr. Daibes is  
11 known for his generosity.

12 The government wants you to make unfair inferences.  
13 But how about some fair inferences? Senator Menendez and  
14 Nadine Arslanian got engaged in 2019. What was Mr. Daibes'  
15 engagement gift? They got married in 2020. It was a small  
16 COVID wedding. Mr. Daibes attended. What was Fred's wedding  
17 gift? Do you think this extremely generous person didn't give  
18 a gift on either occasion?

19 As I said earlier yesterday, he gave Mr. Moldovan, a  
20 friend of his nephew, \$25,000. How much more would he give a  
21 friend for his wedding?

22 And remember, Vasken Khoroizian testified that people  
23 from the Middle East give gold as gifts at weddings, not cash.

24 You heard that the senator and Nadine were looking to  
25 move. They had a bank value the property. We already know

O7B3MEN2

Summation - De Castro

1 Mr. Daibes wanted the property and Nadine texted Jose Uribe  
2 about it.

3 Exhibit B-209-11. Fred says Fred would love the  
4 property. That's Nadine texting.

5 You remember that Mr. Daibes even tried to buy her  
6 mortgage. He is a developer and knows a good investment.

7 Look again at the envelope, again with Mr. Daibes'  
8 company name. On the screen. First, you are bribing someone,  
9 are you going to put the payment in your own envelope? Second,  
10 look at the handwriting on the back of the Daibes Enterprise  
11 envelope. 4 times 1850. Does that look like the price of an  
12 ounce of gold?

13 Look at the slide to the right. 22 times 1855.

14 Nadine had family gold, gold coins. Were all of those  
15 coins on her father's inventory recovered? You also don't have  
16 an up-to-date inventory of what's in Mr. Daibes' safe today.

17 Instead of the cash found in Nadine's safe being given  
18 to buy her house or buy her gold, they want you to conclude  
19 that Mr. Daibes was bribing Senator Menendez, his friend of 30  
20 plus years, through his new wife. Or maybe through his  
21 girlfriend because, remember, the government doesn't know when  
22 this cash and gold was given. If you don't know, then you're  
23 not convinced, and he's not guilty.

24 I want to take a moment to discuss with you a part of  
25 the case that Mr. Daibes was not charged in. Was not charged

O7B3MEN2

Summation - De Castro

1 in. The chapter relating to the prosecution of Elvis Parra by  
2 the New Jersey Attorney General's office. Why would I want to  
3 talk about that? Why I would want to talk about a case that  
4 doesn't affect Mr. Daibes? The reason is because even though  
5 the government failed to prove its case with respect to that  
6 part of the case for all the reasons Mr. Fee and Mr. Lustberg  
7 argued, that part of the case represents the only part of this  
8 case in which the government presented evidence to you  
9 regarding what an actual payment was for. In that part of the  
10 case, they presented an alleged insider to you, a cooperating  
11 witness, someone who could try to convince you that he,  
12 Mr. Uribe, gave Nadine Menendez a car for action by the  
13 senator. Someone who could actually testify about the  
14 circumstances of him providing a car. Someone who could try  
15 and convince you that he knew others gave money, cash to Nadine  
16 for the senator to take some action. They also showed you  
17 records of Nadine Menendez depositing money that they say came  
18 from Mr. Uribe. You saw that in Mr. Monteleoni's summation.

19 Now contrast that with the other parts of the case.  
20 The parts in which Mr. Daibes is charged. No insider. No one  
21 to claim they were present when Mr. Daibes gave Nadine or the  
22 senator things of value. No one to claim why Mr. Daibes gave  
23 things to Nadine or the senator. No bank records. They don't  
24 have anyone like Mr. Uribe to try and make those connections  
25 for you.

O7B3MEN2

Summation - De Castro

1 And that's why in opening and today, I say to you  
2 that's why they must rely on assumptions, guesses, hunches,  
3 presumptions, suspicions, suppositions, and unfair inferences.  
4 They simply cannot give you that information for Egypt, Qatar,  
5 or the District of New Jersey parts of their case, because they  
6 don't have the evidence.

7 And your job is to hold them to their burden. Hold  
8 them to the burden of proving each and every element of each  
9 and every crime with competent evidence.

10 Let's talk a little bit about the law. As I said  
11 earlier and in my opening statement as well, the government can  
12 prove some quids as they relate to Mr. Daibes. I told you from  
13 the start you would not see us challenging any of Daibes'  
14 fingerprints or DNA found on evidence, and sure enough we  
15 didn't. Those hours and hours of testimony about fingerprints  
16 and DNA, not necessary for us. We weren't challenging it.  
17 That's why you saw us only ask a few questions of those  
18 witnesses, Dr. Davis and Ms. Glass. They're up on your screen.  
19 They cannot date DNA, they cannot date fingerprints. They  
20 could not tell you the circumstances regarding how the prints  
21 or DNA ended up on those items. Simply that it was present.

22 While the government had evidence of some quids from  
23 Mr. Daibes, their case fails for what I mentioned earlier.  
24 They cannot establish when they were given and why. The best  
25 Mr. Monteleoni could do in his summation was a range of 2 years

O7B3MEN2

Summation - De Castro

1 at best.

2 A quid pro quo, I expect you'll hear from the Court,  
3 must be explicit. While it need not be expressed or stated, it  
4 must be clear and unambiguous. And an official act must  
5 involve a decision or action on a specific question or matter.  
6 However, not every action taken by a public official qualifies  
7 as an official act. Setting up meetings or expressing support  
8 for an action decision or idea is not an official act without  
9 more.

10 Let's talk about gifts. You know what a gift is.  
11 Something given to another without needing or wanting something  
12 in return. But the judge will instruct you about goodwill  
13 gifts. The kinds of gifts that you can give to public  
14 officials. Please pay very, very close attention when the  
15 judge gives you that instruction. I expect you will hear from  
16 the judge that not every gift or thing of value given to a  
17 public official amounts to a bribe. Under the law, giving a  
18 gift or thing of value to a public official to cultivate  
19 friendship or to build goodwill in hopes of ultimately  
20 affecting one or more unspecified official acts, now or in the  
21 future, is not federal bribery. Is not federal bribery.

22 For bribery, there must be a quid pro quo -- a  
23 specific intent to give or receive something of value in  
24 exchange for an official act. Goodwill gifts made with no more  
25 than some generalized hope or expectation of ultimate benefit

O7B3MEN2

Summation - De Castro

1 on the part of the donor are thus not bribes.

2 That brings me to a couple points on reasonable doubt.  
3 Of course the judge will instruct you on that as well. But I  
4 want to highlight a couple things. Couple things that  
5 Mr. Lustberg also highlighted. I expect the judge will tell  
6 you that a reasonable doubt is a doubt that a reasonable person  
7 has after carefully weighing all of the evidence. It is a  
8 doubt that would cause a reasonable person to hesitate to act  
9 in a matter of importance in his or her personal life. Proof  
10 of such a convincing character that a reasonable person would  
11 not hesitate to rely and act upon it in the most important of  
12 his own affairs.

13 As you prepare to deliberate, after you've heard the  
14 government's second summation, think about those words relating  
15 to reasonable doubt. You are to approach your deliberations as  
16 you approach your most important affairs. The most important  
17 issues in your life. What those affairs are, those issues in  
18 your life, are different for everyone, but the approach should  
19 not be.

20 Approach these deliberations like you would in making  
21 the most important decisions in your life. Decisions like  
22 where should you send your kids to school. Should you stay at  
23 your job or move on. Should you go back to school. Should you  
24 retire early. Who is going to care for your elderly parents.

25 You have to approach deliberations and the question of

O7B3MEN2

Summation - De Castro

1 whether the government has proven its case beyond a reasonable  
2 doubt that seriously. I don't need to tell you how important  
3 this case is to my client and the other parties.

4 Before I wrap up, I want to say one more thing. This  
5 is the last defense summation, but the government still gets to  
6 go one more time. They get to do another summation called the  
7 rebuttal summation. They get the last word. So I can't, we  
8 cannot respond to any arguments that the government makes to  
9 counter our closing arguments.

10 I'd ask you all when you deliberate and consider the  
11 government's rebuttal arguments to keep in mind that we didn't  
12 get a chance to respond. We didn't get the last word. But ask  
13 yourselves how do you think we would respond to those  
14 arguments? And consider that in your deliberations as well.

15 Now, as I said to you back in May, this case is about  
16 assumptions, guesses, hunches, presumptions, suspicions,  
17 suppositions, and unfair inferences. The government wants you  
18 to assume, presume, and unfairly infer the worst. And it needs  
19 you to assume the worst in order for its evidence to make  
20 sense.

21 But assumptions, presumptions, and unfair inferences  
22 are not proof, and they are certainly not proof beyond a  
23 reasonable doubt.

24 As it relates to Mr. Daibes, the government has  
25 presented evidence that at most would cause you to suspect.



O7B3MEN2

Summation - De Castro

1 However, suspicions and assumptions are simply not enough.  
2 You're here to make inferences, reasonable, and fair  
3 inferences. The government wants you to use that, being  
4 allowed to make inferences, as a license for you to speculate.

5 How many times in your life have you speculated about  
6 things in your everyday life that you were wrong about? How  
7 many times in your life have you assumed things in your life  
8 that you were wrong about? You can't do that in a criminal  
9 case. You can't do that with a man's life. You can't do that  
10 and meet justice. You can't do that and fulfill your  
11 obligations as jurors to determine the facts.

12 They haven't called a single witness, an insider, that  
13 can tell you what the gold or money was for connected to  
14 Mr. Daibes. They've shown you no direct evidence and very  
15 little circumstantial evidence that any gold or money that was  
16 connected to Mr. Daibe was given to Nadine or the senator for  
17 any particular official acts.

18 Rather, at best, at best, they have shown that  
19 Mr. Daibes provided Nadine and Senator Menendez with gifts or  
20 goodwill gifts. Gifts to cultivate friendship. Gifts to build  
21 goodwill. Gifts. Not bribes.

22 And I'll leave you with some of the same questions  
23 I've asked you earlier. Did the evidence show when this gold  
24 and money was given to Nadine or Bob Menendez? Did the  
25 evidence show that this gold and money was given to Nadine or

O7B3MEN2

1 Bob Menendez before or after they say Mr. Menendez assisted  
2 with Mr. Hana's business? Did the evidence show that this gold  
3 and money was given to Nadine or Bob Menendez before or after  
4 Philip Sellinger was appointed U.S. attorney? Did the evidence  
5 show that this gold and money was given to Nadine or Bob  
6 Menendez before or after Mr. Daibes was introduced to the  
7 Qataris? Did the evidence show that this gold and money was  
8 given to Nadine or Bob Menendez before or after Mr. Daibes and  
9 the Qataris finished their due diligence and signed a letter of  
10 intent? Or is it just as likely that they were gifts to  
11 cultivate friendship? Or gifts to build goodwill?

12 I submit to you that you should not know those answers  
13 because the government did not give you sufficient and credible  
14 evidence to answer them, and that's fatal to its case. And  
15 that's why the only just conclusion based on the lack of  
16 evidence is that Mr. Daibes is not guilty.

17 Thank you for your time.

18 THE COURT: Thank you, Mr. De Castro.

19 Ladies and gentlemen, I'd like to remind you of a few  
20 things. The government is not on trial here. You know that.  
21 What avenues the government took to investigate this case or  
22 didn't take are not your concern. Law enforcement techniques  
23 are not your concern, because the government is not on trial.

24 Your job is to determine whether the government has  
25 met its burden of proof. Not to decide whether it should have

O7B3MEN2

Rebuttal - Mr. Richenthal

1 used different law enforcement techniques than it did.

2 Similarly, there have been references in the various  
3 closings to the fact that person X or person Y was not called  
4 as a witness during the trial. I remind you that each party  
5 had an equal opportunity or lack of opportunity to call any  
6 witness. The absence of any uncalled witness should not affect  
7 your judgment in any way. But I do wish to remind you that a  
8 defendant in a criminal case has no burden to call any witness  
9 or produce any evidence. You know all that.

10 All right. We now are going to hear the government  
11 rebuttal case, then you'll have my charge, and then you'll  
12 begin your deliberations.

13 Mr. Richenthal, the government rebuttal case.

14 MR. RICHENTHAL: Good morning.

15 May I proceed, your Honor?

16 THE COURT: Yes, I'm sorry. Please proceed.

17 MR. RICHENTHAL: Ladies and gentlemen, over the past  
18 two days, including this morning, you've heard from a lot of  
19 lawyers. You've heard from defense counsel for hours. They  
20 make their arguments with passion, with emotion, with force.  
21 They are committed advocates for their clients, and that's  
22 exactly what they should be.

23 But just because a lawyer says something loudly, or  
24 softly, with emotion, or none, with passion or not, doesn't  
25 make it true.

O7B3MEN2

Rebuttal - Mr. Richenthal

1 And just because a lawyer says the evidence doesn't  
2 exist, or it's confusing, it doesn't mean it doesn't exist and  
3 it doesn't mean it's confusing.

4 Lawyers are not magicians. A trial is not a contest  
5 about who speaks the best, who speaks with the most emotion,  
6 who speaks the longest or the loudest. It's not even about who  
7 speaks the most persuasively.

8 Because lawyers talk in court. The past few days,  
9 they've talked a lot. What speaks in court is the evidence.  
10 That's the only thing that speaks. That's the only thing that  
11 matters.

12 And so much of what you've heard in the past two days  
13 is not based on the evidence. It's not based in fact, it's not  
14 based in common sense. It isn't what happened.

15 Now, again, that is not a knock on defense counsel.  
16 When the evidence of guilt is so clear, they've tried to  
17 convince you to look elsewhere, to make you question what  
18 you've seen, what you've heard, what you've learned. To try to  
19 get you to believe the unbelievable.

20 This is our opportunity to respond. Here's what I'm  
21 going to do this morning. First, I'm going to make a pretty  
22 basic but important point. Then I'm going to return to the  
23 evidence -- not all of it. Mr. Monteleoni spent hours walking  
24 through the evidence. And it's all going to be available to  
25 you as you deliberate. But there are some fundamental things

O7B3MEN2

Rebuttal - Mr. Richenthal

1 in this case that you've heard over the past two days, as I've  
2 said, that are not grounded in that evidence. Not even close.  
3 I'm going to take a little time to correct some of those  
4 things, to return to what you actually saw, what you actually  
5 heard, what you actually learned. Not what you were told you  
6 saw, heard, or learned.

7 Third, I'm going to talk briefly about some legal  
8 points. Now, again, I'm not going to go through all of them,  
9 and if anything I say conflicts with what you hear from Judge  
10 Stein, you should listen to him. But also again, there are  
11 some fundamental things you were told over the past two days  
12 that are very different from what I expect you're going to hear  
13 from Judge Stein.

14 Fourth, I'm going to talk about some things that  
15 defense counsel argued that are just wrong. Not because I say  
16 they're wrong. But because the evidence shows you that they're  
17 wrong. Your common sense tells you that they're wrong. I'm  
18 going to talk briefly about the cash, about the gold, and about  
19 a number of other things that defense counsel argued should  
20 give you pause or concern and shouldn't. That will probably be  
21 the longest section of what I talk about this morning.

22 And finally, I'm going to talk about what this all  
23 means.

24 I'm not going to be speaking for many hours. You've  
25 listened to the lawyers for many hours already. It's going to

O7B3MEN2

Rebuttal - Mr. Richenthal

1 take some time, but I'm going to do my best to wrap up before  
2 lunch. So to do that, I plan to focus on some things in detail  
3 and some things at a higher level. I plan to focus on what  
4 matters.

5 So let's get started. First, I said I was going to  
6 talk about a basic principle. Multiple counsel, Mr. De Castro  
7 among them this morning, talked about inferences versus  
8 assumptions. And they suggested that if you don't have direct  
9 evidence, you just can't be convinced of guilt. Mr. Fee even  
10 suggested if you don't have a video, you just don't know what  
11 happened.

12 Ladies and gentlemen, you don't need a video of Robert  
13 Menendez taking bribes from Wael Hana and Fred Daibes to know  
14 what happened here. Juries have been hearing evidence and  
15 rendering verdicts since the founding of our country, long  
16 before there were videos. Long before there was DNA and  
17 fingerprints, although you actually have that in this case.

18 Now, before this trial began, Judge Stein told you  
19 assume the blinds are drawn, so you can't see outside. Assume  
20 someone walks in the back of the courtroom, he or she has a wet  
21 umbrella. You have direct evidence of the wet umbrella. You  
22 saw it. You are entitled to infer from the direct evidence of  
23 the wet umbrella another fact: That it's raining outside.  
24 That is all an inference is. You do it every day.

25 And the evidence here is not like seeing one wet

O7B3MEN2

Rebuttal - Mr. Richenthal

1 umbrella. It's like seeing a room full of wet umbrellas, and  
2 seeing the people with wet shoes and hearing thunder behind  
3 you. The evidence is that clear. Including witness after  
4 witness telling you what you already saw. That the documents  
5 in front of you, they mean what they say. And telling you what  
6 your common sense also told you, that what happened is  
7 criminal.

8 So let's return to the evidence. Not stories of what  
9 could have happened. What did happen.

10 So first I want to talk about a couple of things  
11 you've heard over the past few days, including about witnesses,  
12 that are just not accurate.

13 Let's start here. Mr. Fee said -- you can see it --  
14 there is not one witness who told you they bribed Senator  
15 Menendez. Now, that's just not true. Look on the right.  
16 That's Jose Uribe's testimony. He pled guilty to bribing  
17 Senator Menendez.

18 What else did you hear? In fact, you heard it again  
19 this morning. That Michael Soliman wasn't confident, that he  
20 didn't tell you what Senator Menendez learned about Philip  
21 Sellinger's recusal. Menendez's summation is on the left.  
22 Remember he pointed to the text message. And he accurately  
23 said that Soliman said I'm not exactly sure what that text  
24 message meant.

25 He left out what the Soliman also said, which is that

O7B3MEN2

Rebuttal - Mr. Richenthal

1 text message or no text message, I told Menendez that Sellinger  
2 told me he did not have to recuse. That's on the right side.

3 Now, Mr. De Castro spent some time this morning  
4 suggesting that Soliman got that wrong. Ladies and gentlemen,  
5 he might have gotten it wrong in the sense that maybe Phil  
6 Sellinger didn't tell him exactly that. But Michael Soliman is  
7 not a lawyer. You saw him. He didn't get it wrong in the  
8 sense of lying. He's Senator Menendez's former chief advisor.  
9 If he got wrong what Phil Sellinger says, did it matter? No.  
10 Why not? Because he's the one who spoke to Menendez. He's the  
11 one Menendez trusted. And he conveyed what he understood,  
12 which is that Phil Sellinger did not have the to recuse.

13 And you know that he got that right, meaning what he  
14 told Menendez, because of what Menendez did next. He went back  
15 to Phil Sellinger after yanking him. Clearly Michael Soliman  
16 told you honestly what he honestly understood and told  
17 Menendez.

18 I want to pause for a moment on this part of the  
19 story. That is Phil Sellinger, Michael Soliman, Fred Daibes.  
20 You heard a lot about it this morning. And I want to respond  
21 to a couple of those things. This seems like a good time to do  
22 that.

23 Now, first, Mr. De Castro argued -- I think Mr. Fee  
24 may have argued as well -- that the reason that Phil Sellinger  
25 was pulled, that is the reason Menendez went to Esther Suarez,



O7B3MEN2

Rebuttal - Mr. Richenthal

1 was the White House memo.

2 So let's return to the actual evidence. When was Phil  
3 Sellinger pulled? Not a quiz. You guys remember?  
4 December 17. You saw the messages. White House memo didn't  
5 exist yet.

6 What else do you know? After Sellinger was pulled and  
7 after the White House memo existed, what did Menendez do?  
8 Well, among the things he did is he lied to Phil Sellinger  
9 about why he had been pulled and he led his staff to believe  
10 they had a falling out.

11 I am going to pause here. I'm not going to rehash on  
12 all this. Just pause on what that means for a second. If you  
13 were changing from selecting your friend to selecting someone  
14 else, because the White House was interested in other types of  
15 candidates, how is that a falling out? And why lie about it?  
16 Just tell him, listen, you're a great man, but our country is  
17 wonderful in part because it's diverse, and I'm going to go in  
18 a different direction. Why not say that? They're like really  
19 close friends. Because that was false. That's why he didn't  
20 tell him.

21 And what else did Mr. De Castro argue about this part  
22 of the scheme? Well, he said that Menendez wouldn't have  
23 called the lawyer if he was getting bribed. That makes no  
24 sense at all. Remember when this happens. He admonishes the  
25 lawyer to make certain types of arguments and he calls Vikas

O7B3MEN2

Rebuttal - Mr. Richenthal

1 Khanna, compliments the same lawyer. Ladies and gentlemen,  
2 those things are tied together. It's not an accident those two  
3 things happened. They're literally part of the same scheme.  
4 Because Menendez wanted to make this case go away. So he used  
5 everything in his power to try to do it.

6 With Vikas Khanna, he had to be more careful, but that  
7 doesn't mean he didn't want that to happen.

8 By the way, what else did Menendez do? Well, after he  
9 learns that Phil Sellinger has recused himself, he tries to get  
10 a message to him anyway. There is no explanation by any lawyer  
11 for the defense as to why that happened or how it happened.  
12 Now Menendez is so careful, he doesn't even try to do it  
13 himself.

14 MR. FEE: Objection. Burden shifting.

15 MR. RICHENTHAL: I'm referring to the evidence.

16 THE COURT: Just a moment.

17 I'll remind you, ladies and gentlemen, the defendants  
18 are under no obligation to present any evidence whatsoever.  
19 The burden is always on the government to prove its case beyond  
20 a reasonable doubt. Keep that in mind.

21 Proceed.

22 MR. RICHENTHAL: Damn right it is. It should be. And  
23 we've met it.

24 When I say you've heard no explanation, I'm talking  
25 about the arguments you've heard, because it is a fact that

O7B3MEN2

Rebuttal - Mr. Richenthal

1 that happened. No one has challenged Michael Soliman on that  
2 fundamental fact, that Menendez tried to get a message to  
3 Sellinger after he was recused. That actually happened in the  
4 world. It's not subject to dispute. So the question's why.  
5 This trial has told you why.

6 One more thing on Sellinger. Multiple defense counsel  
7 argued to you that because Philip Sellinger told you, as they  
8 put it, that Robert Menendez had never done anything unethical,  
9 Robert Menendez must not be guilty.

10 Ladies and gentlemen, Mr. Sellinger didn't know what  
11 you know about the gold and the cash. He didn't even know when  
12 he would be yanked. He knew a tenth of what you knew. Do you  
13 have any doubt that if he knew that Senator Menendez had taken  
14 payment from Fred Daibes that his answer about unethical  
15 behavior would have changed? Come on. Of course he would have  
16 given you a different answer.

17 Sellinger didn't even know why he was unyanked.  
18 Menendez didn't tell him that either. Remember, Menendez  
19 unyanks him, right, because he thinks he is not going to be  
20 recused. He doesn't even tell him that, because now he's going  
21 to get his guy. Think about that.

22 Let's go to another part of the scheme. Defense  
23 counsel told you Bob, that's Menendez, made one phone call  
24 about a case that had been presented to him as an abusive  
25 prosecution. That's the top part of your screen. Except it

O7B3MEN2

Rebuttal - Mr. Richenthal

1 didn't happen. Look at what Michael Critchley actually said.

2 Did Menendez ever say to you there was discrimination? Excuse  
3 me.

4 Did you ever say to Menendez there was discrimination?

5 I did not.

6 Did you ever talk about a selective prosecution on  
7 that call?

8 I did not.

9 Did you ever talk about selective prosecution with  
10 anyone?

11 No.

12 When Menendez called you about Mr. Parra's case to the  
13 best of your recollection, did he ask you about the facts of  
14 the case?

15 No.

16 So, when Menendez's counsel asked you to assume that  
17 Menendez called Gurbir Grewal because he learned from Michael  
18 Critchley that there was an abusive prosecution, that isn't so  
19 because Michael Critchley didn't say it was so. In fact,  
20 Michael Critchley told you he didn't think that was true. He  
21 thought the case shouldn't have been brought. He never said it  
22 was discriminatory. He never talked about Latino truckers, it  
23 didn't happen.

24 But, like, assume this is a confusion for a second.

25 Can we go to the next slide. There is another problem

O7B3MEN2

Rebuttal - Mr. Richenthal

1 with the idea that the Michael Critchley caused the Gurbir  
2 Grewal call. It's timing. The Gurbir Grewal call was first.  
3 The Michael Critchley call was second. Obviously Senator  
4 Menendez did not call Gurbir Grewal on January 29 because he  
5 called Michael Critchley on March 12. That is literally  
6 impossible. It did not happen. Now, again, it's not because  
7 I'm telling you it did not happen. It's because undisputed  
8 records in evidence show you it did not happen.

9 Now, I want to pause for a moment on the idea that,  
10 timing aside, Mr. Menendez made his call to Mr. Grewal because  
11 Mr. Menendez was worried about truckers and truckers losing  
12 their jobs. Remember, this call with Critchley hadn't happened  
13 yet, so obviously he didn't learn anything about truckers on a  
14 call he hadn't had yet.

15 Table that for a second. Let's assume Senator  
16 Menendez was legitimately worried about truckers between say  
17 January and March related to the Parra case. Why did he not  
18 call Grewal again until the meeting in September? That's six  
19 months between March and September. He didn't do anything.  
20 Nothing. If he's so deeply worried that 95 truckers will lose  
21 their jobs, if he's so deeply worried about discrimination, why  
22 doesn't he do anything? You know the answer, it's because he  
23 didn't care about those things. He cared about money.

24 So why September? You know the answers to that, too.  
25 It's not a guess. It's not an assumption. Because Jose Uribe

O7B3MEN2

Rebuttal - Mr. Richenthal

1 learned that Detective Lopez had reached back out to Ana  
2 Peguero and was asking questions. So Jose Uribe reached back  
3 out. So Menendez had to do something. The minimum necessary,  
4 but something to continue the car payments. Not the maximum  
5 necessary to fight discrimination or save jobs. Because what  
6 did Menendez do after that meeting again? Nothing. Again.  
7 Nothing. He just lied to Uribe and said it's all good.

8 Ladies and gentlemen, if you're legitimately worried  
9 about dozens of jobs, why would you lie to the man who  
10 supposedly told you you should be worried about dozens of jobs?  
11 Because what you're interested in is not the dozens of jobs.  
12 What you're interested in is the Mercedes convertible in the  
13 driveway.

14 Now, if that doesn't convince you -- although it  
15 should -- let me remind you of two other facts. Again, these  
16 aren't assumptions. You know these things. He didn't involve  
17 his staff. Remember he had a very large, very professional  
18 staff. This is purportedly an important constituent issue.  
19 Right? Dozens of jobs. Doesn't involve them. And doesn't put  
20 the meeting with Grewal on his calendar. Because this wasn't  
21 about jobs.

22 Now, I've said if you have any doubt about that, and  
23 you shouldn't, but I'm going to give you one more thing. I'm  
24 talking about it for a while because multiple defense counsel  
25 did. Can we put up Defense Exhibit 962.

O7B3MEN2

Rebuttal - Mr. Richenthal

1           You may remember this, this is the exhibit the defense  
2 put in about all the parts in the New Jersey Attorney General  
3 Office. It is a long exhibit.

4           Now, the theory that Senator Menendez was worried  
5 about jobs might lead you to think, well, must have been a  
6 unique case, right? You know there is an entire section about  
7 horse racing? That's page 17 in the exhibit. There is the  
8 another entire section about events like kickboxing. That's  
9 page 18. There is an entire section about alcoholic beverage  
10 sales, page 7. Or why don't we just go to page 5. Let's stop  
11 there. See the line towards the end. This part of the New  
12 Jersey Attorney General Office oversees 60,000 New Jersey  
13 registered businesses. 60,000.

14           But Menendez called about one case. Ever. The case  
15 of the person bribing him.

16           Ladies and gentlemen, this wasn't about a constituent.  
17 It was about a car. There is no exception on Senator  
18 Menendez's website for worries about truckers in terms of  
19 intervening in a criminal case. Doesn't exist. But you also  
20 know it was not about truckers. It wasn't the trucker  
21 exception that wasn't written down. It was the Mercedes-Benz  
22 exception that couldn't be written down.

23           Now, speaking of the Mercedes, let's go to the next  
24 slide if we could. Slide 6 I think. With respect to the  
25 Mercedes, you heard, despite all the evidence to the contrary,

O7B3MEN2

Rebuttal - Mr. Richenthal

1 that Jose Uribe was just helping Nadine, like, locate a dealer.  
2 That's what was said in summation.

3 Ladies and gentlemen, does that make any sense at all?  
4 Remember, she'd already been to the dealer. That's literally  
5 what this photograph is, right? It's photographs of two cars  
6 at the dealer. She obviously wasn't telling Menendez the  
7 following month, that is in April, I need help finding a  
8 dealer. She has literally found a dealer and got it down to  
9 two cars and was talking about what color to get.

10 So, when she tells Menendez, Jose is helping me make  
11 arrangements for the car, she's not talking about where to buy  
12 it. She's talking about how to pay for it. And you know that  
13 for many, many reasons, one of which is, just to go back for a  
14 second, that she met Jose in a parking lot with cash and told  
15 Menendez before that, I'm going to meet him for five minutes.  
16 You don't meet someone for five minutes in a parking lot if  
17 you're talking about what car dealer to go to. You don't meet  
18 them in a parking lot at all if you're talking about what car  
19 dealer to go to.

20 Let's go to the next slide. Now, this is from a  
21 different summation, Mr. Hana's summation. What Mr. Lustberg  
22 said is Senator Menendez just made a simple call on behalf of a  
23 constituent who felt aggrieved. That's the left side. Sounds  
24 totally innocent.

25 What did McKinney actually tell you? I never had a



O7B3MEN2

Rebuttal - Mr. Richenthal

1 call like that before. Ever.

2 Go to the next slide.

3 Now, to go back a moment to Mr. Menendez's summation.  
4 Remember being told this, that Katia Tabourian didn't remember  
5 if she ever saw gold. Right? He said that's what the  
6 government said, and that's not what she said.

7 Look at what she said. "I don't remember." To be  
8 clear, earlier in her testimony she seemed to say, yeah, I had  
9 seen gold. She didn't distinguish between gold in one form and  
10 gold in another. Later she was asked did you see a kilo. She  
11 seemed to say in her safe, and the Court said did you actually  
12 see it? I don't recall. I don't remember.

13 There is nothing wrong with not remembering, but the  
14 evidence doesn't show she saw a kilo of gold in that house.  
15 The evidence shows she doesn't remember if she ever did.

16 The bottom line is this, ladies and gentlemen, I've  
17 only gone through some examples. When a lawyer, me included,  
18 tells you what the evidence shows, look at what the evidence  
19 actually shows. Because I could have given you other examples,  
20 when Mr. Fee and Mr. Lustberg both said there was no evidence  
21 that Egypt wanted the embassy information -- I'm going to talk  
22 about the embassy information -- that's not so. They left out  
23 that after Menendez sent it to Nadine, Nadine sent it to Hana,  
24 and Hana sent it to an Egyptian official. Just wasn't in what  
25 you heard.

O7B3MEN2

Rebuttal - Mr. Richenthal

1           You also heard that Hana's role in the New Jersey  
2 Attorney General scheme, that's the Gurbir Grewal piece of  
3 this, must have ended when Michael Critchley came on to the  
4 case. But then why was he sending Nadine information about the  
5 case after? So she could brief Menendez about his call to  
6 Grewal. And why was he helping promise Nadine a car, after?  
7 Those are all in the timeline. He's doing it because his role  
8 wasn't over.

9           So again, when you've heard something in the past  
10 couple of days and it doesn't fit your memory or you're not  
11 sure, go back and look.

12           Now, I want to talk briefly about gold. Now, Mr. Fee  
13 argued you just don't know where the gold that Nadine took a  
14 photograph of was, or whether it was even sold to Vasken  
15 Khoroizian at all. So you don't know in turn whether Fred  
16 Daibes gave that gold.

17           You probably remember this. He suggested Nadine took  
18 a photo, the photo must have been when she was at  
19 Mr. Khoroizian's store, I think he said it was 2:04 p.m. Since  
20 the photo looks like it was on the safe, she must have not been  
21 selling gold to Mr. Khoroizian. He must have shown gold that  
22 others had given him.

23           I would note the defense never asked Mr. Khoroizian  
24 whether Nadine sold him gold, and Mr. Khoroizian was many  
25 things, one of which was a talker. You didn't hear anything

O7B3MEN2

Rebuttal - Mr. Richenthal

1 like that.

2 Put that aside. What lawyers say doesn't matter. The  
3 questions lawyers ask doesn't matter. What matters is the  
4 evidence. So let's go to the next slide.

5 This is what I'm talking about. He asked you to  
6 conclude that Vasken just showed Nadine Fred's gold. That's  
7 Nadine's gold. That's what he says on the left. She took a  
8 photo. It was like a show-and-tell opportunity.

9 Now, just for a moment, look at the safe on the left  
10 which supposedly is where this photo was taken. So, how in the  
11 world would this photo actually be taken against that safe? I  
12 don't mean to be telling a joke. I mean literally how is that  
13 possible? Did they climb on up on a ladder? Did they climb up  
14 on the desk? Kilogram bars are like several pounds each.

15 They could have taken a photo on the desk. The story  
16 is he literally put the gold on top and then took a camera and  
17 took a photo. Or, I recognize this is a little silly, or,  
18 somehow they got the gold to stick to the safe.

19 This is obviously, like, not a photo taken on the  
20 safe. That didn't happen.

21 By the way, why would Vasken Khoroizian randomly show  
22 Nadine Menendez gold that happened to be from Fred Daibes and  
23 happened to be from Wael Hana, the two men bribing her husband?

24 Mr. Fee said this either yesterday or maybe the day  
25 before, that the government's asked you to engage in

O7B3MEN2

Rebuttal - Mr. Richenthal

1 assumption, speculation, fantasy, and conjecture. That's a  
2 quote. That is what this argument is. It's a fantasy. It  
3 didn't happen.

4 But there is actually, like, a more fundamental  
5 problem with the argument that this is a photo taken on top or  
6 inside of the safe at 2:04 p.m., because she wasn't at the  
7 store at 2:04 p.m.

8 Go to the next slide. This is the argument Mr. Fee  
9 made on the right, and he grounded that -- the text is small --  
10 on the text message at the top, I'm going to meet him at 2 p.m.  
11 But can we go to the next slide. He left out that she wasn't  
12 there at 2 p.m. That she told him I'd like to meet at 3 p.m.,  
13 and he responded okay.

14 So not only was this photo not taken on top of the  
15 safe, or on the side of the safe. She wasn't even in the  
16 building with the safe at the time the photo was taken. It did  
17 not happen.

18 Can we go to the next slide. Mr. Fee also suggested  
19 that you don't even know if this gold was sold. Look at the  
20 checks on the right. Put aside for the moment that  
21 Mr. Khoroizian told you it was sold. But literally look at the  
22 checks. Two different checks, for gold, from Avital Gold &  
23 Platinum. Look at the memo line. You don't have to guess what  
24 was being sold. It says it 1kg each. That's 2 kilos of gold.  
25 Those are the checks with the Manhattan address on it.

O7B3MEN2

Rebuttal - Mr. Richenthal

1           Now, I want to pause for a moment on the checks.  
2           Mr. Fee seemed to suggest that even if she did sell the gold,  
3           which clearly she sold the gold -- I'm pausing so one of your  
4           colleagues can put their screen up. Mr. Fee suggested that  
5           even if she sold the gold, and obviously she sold the gold,  
6           that she clearly did not tell Menendez she was going to do  
7           that. Or told him some time later.

8           The story he offered seemed to be that because  
9           Menendez had some money in his own bank account, that Nadine  
10          sold the gold, notwithstanding that fact, means they weren't  
11          talking about money. Especially if the money was just for her  
12          mortgage. He argued that, well, Senator Menendez has enough  
13          for the mortgage, so Nadine's selling the gold to cover the  
14          mortgage, obviously they're not talking about selling the gold.  
15          But, again, lawyers' arguments aren't evidence. So let's look  
16          at the evidence. The next slide, please.

17          You can stop there. The top of your screen is two  
18          days before a conversations with Fred Daibes where he gave her  
19          more gold, and three days before she sold the gold. And what's  
20          going on. Menendez and Nadine are looking at new homes.  
21          Expensive homes. There wasn't enough money in his bank account  
22          for that.

23          So in short, when Menendez called Shannon Kopplin  
24          about a month before this, right, in February, and reported the  
25          gold, that is not evidence of innocence, which is what you

O7B3MEN2

Rebuttal - Mr. Richenthal

1 heard the defense say. It is evidence of guilt. Because you  
2 know that by at least October 18, 2021, Menendez knew that Fred  
3 Daibes had given him a kilo of gold because it is the first  
4 kilogram gold search he has ever performed in his entire life  
5 after Fred Daibes comes over with doughnuts.

6 But by spring, they're potentially looking to buy a  
7 house. They're looking for money. And they're obviously  
8 talking about it.

9 So now there is a problem. You can't sell gold and  
10 get hundreds of thousands of dollars in checks without going  
11 into the financial system. So they invent a story. You've  
12 heard about the story. This story is I, Senator Menendez, just  
13 learned of this gold. You know that's not true.

14 Now, just to be clear, there is some evidence Nadine  
15 came from money, right, in the 1970s and 1980s. But by 2022,  
16 it is very clear that's gone. She literally was on the verge  
17 of losing her home. There is not kilogram bars sitting around  
18 the house. And if they were, that stuff is not sentimental.  
19 That's not what you heard from the witnesses. Jewelry,  
20 absolutely, that's sentimental. A kilogram of gold, no. Any  
21 gold she had like that was long gone by then.

22 When they said -- and they, not just her, because he  
23 said it to Kopplin and she said it to Vasken Khoroizian, it's  
24 from my parents, that's because they concocted a story that  
25 it's from her parents.

07B3MEN2

Rebuttal - Mr. Richenthal

1 Just to pause on Google because I referenced the  
2 October 18, 2021, search. There was an argument you heard from  
3 Mr. Fee that you don't know who was searching because at some  
4 other time there are searches for things like how to say tomato  
5 in Spanish.

6 Ladies and gentlemen, they are in a relationship.  
7 That she may have searched for him on occasion or he may have  
8 searched for her on occasion tells you nothing about what  
9 happened on October 18, 2021. But what you know happened on  
10 October 18, 2021, is Daibes brought doughnuts and Menendez sent  
11 out a recommendation letter from the same account within a  
12 minute of Googling kilogram of gold price for the first time in  
13 his entire life.

14 That search was his search. That he may have searched  
15 another time for tomato or given his girlfriend or wife his  
16 phone and she searched for tomato has literally nothing to do  
17 with this case.

18 For the same reason, Mr. De Castro's argument that  
19 because you don't know when with precision a particular gold  
20 bar was given to Menendez or Nadine, you cannot conclude any of  
21 the bars was a bribe, should be rejected. I'm going to talk a  
22 little more about that, but just to pause for a moment. You  
23 absolutely know when, with respect to a least one gold bar,  
24 October 18, 2021. Mr. De Castro may be right that literally  
25 the bar he showed you, you don't know. I don't expect you'll

O7B3MEN2

Rebuttal - Mr. Richenthal

1 hear from Judge Stein you have to conclude literally that  
2 physical piece of metal is the bribe. You just have to  
3 conclude there was a bribe.

4 And you know that however many bars of gold were given  
5 previously by Mr. Daibes, although to be clear, there is  
6 literally no evidence he ever gave gold earlier, but you know  
7 even if he gave gold earlier, he certainly gave at least one on  
8 October 18, 2021. And you know that Nadine and Menendez  
9 concocted a story about it to sell it. Actually, to sell two  
10 of them.

11 What else are you asked to accept that just isn't  
12 grounded in evidence? Well, according to Mr. Fee, if a bank  
13 sees cash, even one bill from 2006, they take it.

14 Now, that may have come as a surprise to you, if you  
15 have bank accounts. You probably never had the bank snatch  
16 cash from you after seeing a serial number. But it also has no  
17 basis in evidence at all. It is an invention. Mr. Menendez  
18 may wish banks worked like that. They don't. And again, it's  
19 not because I tell you that, you heard, you heard from  
20 Mr. Catania. What did he tell you? The opposite.

21 Again, you already knew that from your own everyday  
22 lives. But if you any doubt about that, he told you those fall  
23 apart, sure, but banks don't just, like, grab them. That's  
24 just not true. Because you were shown it's not true. Not  
25 because I say it.



O7B3MEN2

Rebuttal - Mr. Richenthal

1 Now, I've spent some time talking about evidence.  
2 Again, I don't have time to talk about all of it, it's all  
3 before you and you should look at as much as you want. But I  
4 want to talk a little bit about the law, and I want to talk  
5 about four things about the law.

6 Again, if I say anything that conflicts with what  
7 you're going to hear, you need to listen to the judge, not me.  
8 But I want to just focus on a few things that you heard from  
9 defense counsel that are nothing like what I expect you're  
10 going to hear.

11 So let's start with official act or official action.  
12 Can we have the next slide. You were told by both  
13 Mr. Menendez's counsel and by Mr. Hana's counsel in short that  
14 bribes are not -- you can't find official action because  
15 Senator Menendez is a federal official, Gurbir Grewal is a  
16 state official. You were told that.

17 You were also told, I think at least once or twice,  
18 Senator Menendez doesn't work for the USDA, so anything he did  
19 sort of just can't count. These are just two examples of what  
20 you heard.

21 I expect you're going to hear the opposite. Look at  
22 the bottom of your screen. I expect you are going to hear two  
23 important things, the first is what's on your screen. An  
24 official act does not have to be done by the person who got the  
25 bribe.

O7B3MEN2

Rebuttal - Mr. Richenthal

1           Let me say that again. It does not have to be done by  
2           the person who got the bribe. It can be done by exerting  
3           pressure or providing advice to someone else who doesn't know  
4           about the bribe. Like Ted McKinney. Or Gurbir Grewal. That's  
5           the first thing.

6           The second thing I expect you're going to hear for  
7           certain counts known as the honest services fraud counts, that  
8           second person, that is the official who doesn't know about the  
9           bribe who is being pressured or sought to do something, does  
10          not have to be a federal official. I expect you're going to  
11          hear point blank it can be a state or local official.

12          Now if you do hear that, what that means is, it does  
13          not matter, it does not matter that Gurbir Grewal worked for  
14          the State of New Jersey and Senator Menendez was in the Senate.

15          MR. FEE: Misstates the law.

16          THE COURT: Ladies and gentlemen, I'm going to tell  
17          you what the law is. If any of these attorneys, either from  
18          the government or any of the defendants, give a statement of  
19          the law that is not the same as what I give you, you are to  
20          follow my instructions.

21          MR. RICHENTHAL: Do that. Just like I said.

22          Let's go to the next slide. Quid pro quo. Fancy  
23          Latin means this for that.

24          Now, you heard from Mr. Menendez's counsel, you heard  
25          from Mr. De Castro yesterday, I think you heard it again today,

O7B3MEN2

Rebuttal - Mr. Richenthal

1 that you have to have like a precise alignment, like which bars  
2 for which act, which bills for which act.

3 Again, if the judge says something different from what  
4 I'm about to say, listen to him. Do not listen to me.

5 What I expect you're going to hear is that is not the  
6 law either. I expect you're going to hear it doesn't have to  
7 be this for that. It can be these for those, as in multiple  
8 things for multiple things. I expect you're going to hear  
9 what's on the bottom of your screen. And look at the last  
10 sentence.

11 And of course that actually makes sense, right.  
12 Because if a public official took a bribe for three things, is  
13 he not guilty? He would only be guilty if he took a bribe for  
14 one thing? If a public official took three bribes instead of  
15 one bribe, is he less guilty?

16 Now, again, you should listen to what Judge Stein  
17 says, but your common sense tells you the argument that, like,  
18 it has to be one for one cannot possibly be right. And it  
19 isn't right.

20 Let's go to the next slide. You heard a lot about  
21 conspiracy from multiple defense counsel. This is an example.  
22 Mr. De Castro. The idea they want you to accept is that all  
23 conspirators, they must have a equal role. It's like a  
24 partnership and they're all equal partners. Well, I expect  
25 you're going to hear that's not the law either.

O7B3MEN2

Rebuttal - Mr. Richenthal

1 Bottom of your screen is what I expect you are going  
2 to hear. Some play major roles. Some play minor roles. They  
3 don't have to be equal.

4 Now you also heard a lot about timing. The argument,  
5 I think Mr. Hana's counsel, you may have heard it from Mr. De  
6 Castro as well, if people join the alleged conspiracy in 2019  
7 instead of 2018, they're not part of it. I expect you'll hear  
8 that's not the law either. People can join later. They don't  
9 have to join at the beginning. They can join for any purpose  
10 within the conspiracy, and they're responsible for the entirety  
11 of the conspiracy. This is exactly what I expect you're going  
12 to hear.

13 So whatever you think of those factual arguments, and  
14 you should scrutinize them, they don't actually matter.

15 Now finally, Section 219.

16 THE COURT: If you're going on to a new topic, does it  
17 make sense to have the break at this point, sir?

18 MR. RICHENTHAL: Sure.

19 THE COURT: Ladies and gentlemen, let's take 15  
20 minutes.

21 (Jury excused)

22 MR. FEE: One issue.

23 THE COURT: You may be seated in the courtroom.

24 MR. FEE: Sorry, your Honor, two quick things.

25 There were twice that there was portions of a

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Rebuttal - Mr. Richenthal

1 summation compared to portions of a transcript of testimony  
2 that were misstated.

3 THE COURT: What was misstated?

4 MR. FEE: There is no way it's intentional. One --  
5 unintentional.

6 Katia, Mr. Richenthal told the jury, there has been a  
7 lot of back and forth about this. He said today, he said Katia  
8 did not say she saw a 1 kilo gold bar. Katia said she saw some  
9 gold. That's what he said today.

10 The transcript that is in evidence, what she said was:  
11 "Q. Have you ever seen a 1-kilo bar at 41 Jane Drive -- 1 kilo  
12 gold bar 41 Jane Drive?

13 "A. I have."

14 It's just a pure misstatement. And it's a trick you  
15 do in rebuttal.

16 (Continued on next page)

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1 THE COURT: Wait, wait. No, no, no. Let's not accuse  
2 anybody of tricks.

3 My recollection, at least what I saw on the screen,  
4 was a question from me as to whether she had seen a one kilo in  
5 the safe, and she said I don't recall.

6 MR. FEE: There's two things here, your Honor.

7 That was the cross. Mr. Richenthal, he showed them  
8 the cross where it said, have you seen it in the safe? She  
9 said, I have not seen it in the safe.

10 Mr. Richenthal then told the jury, in his words,  
11 today, Katia never testified that she saw a one-kilo gold bar.

12 Pull it up.

13 THE COURT: Let me just see it.

14 MR. RICHENTHAL: Your Honor, I'd like to refer to what  
15 I said after that, because I know exactly what I said.

16 THE COURT: Go ahead.

17 MR. RICHENTHAL: I literally told the jury her  
18 testimony shifted. I'm telling you what the defense left out.

19 That's true. She said she saw gold, was never asked  
20 where. The Court asked, well, did you see it in the safe? She  
21 said I don't recall. What I was doing was placing her  
22 testimony in context. I literally told the jury she had  
23 earlier said she saw gold.

24 THE COURT: All right.

25 MR. FEE: Your Honor, his focus of the point -- let's

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1 see if we can find it. His focus of the point, he said to them  
2 she has not seen a kilo; she has only saw gold. He said that.  
3 It's just a pure misstatement. We'll find it for you, your  
4 Honor.

5 I can flag the second point, which is similar.

6 MR. RICHENTHAL: I would note -- and this is, I think,  
7 frankly, a little silly -- the very slide that they're  
8 objecting to, which is on your Honor's screen, literally  
9 includes Mr. Fee's statement that she said she saw gold. I was  
10 hardly hiding it from the jury.

11 THE COURT: All right. Just a moment. Let me look at  
12 it.

13 MR. FEE: He's calling me a liar. That's the whole  
14 point of this.

15 THE COURT: Gentlemen.

16 MR. FEE: No, no, no.

17 THE COURT: Gentlemen.

18 MR. FEE: Your Honor, not in court here.

19 THE COURT: Let me look at what's on the screen, sir.

20 MR. FEE: His contrasting --

21 THE COURT: Let me look at what's on the screen, sir.

22 MR. FEE: Yes, yes, yes. Yes, your Honor.

23 THE COURT: All right. In your summation here, you're  
24 saying, she was asked if she'd ever seen a one-kilo bar, and  
25 she said I have. And she was asked when did you see it, and

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1 she said years and years ago. And Mr. Richenthal is putting up  
2 the question to her:

3 "Q. I said you never saw a kilo in the house, correct?

4 "A. In the safe."

5 Q. Then the question was:

6 "Q. Did you see a one-kilo gold bar in Nadine's safe?

7 "A. I don't recall."

8 Go ahead.

9 MR. FEE: The purpose of the slide, and my point, your  
10 Honor -- I'm sorry. I reacted to the word "liar." He can do  
11 that. What I'm saying is the purpose of this slide is  
12 contrasting my argument with what he is saying is the evidence.

13 THE COURT: That's right.

14 MR. FEE: Yes, your Honor.

15 THE COURT: I'm sorry. It's contrasting your argument  
16 to the extent you said the evidence said something.

17 MR. FEE: Correct, your Honor.

18 THE COURT: And he's showing another part of the  
19 evidence where the evidence is different: "I don't recall."

20 MR. FEE: That's right. And I don't have an issue  
21 with that. My issue is this, his words to the jury, that he  
22 said Katia never told the jury that she saw a kilo. He said,  
23 in his words, that she only saw gold. And that's, on a  
24 rebuttal, a very inappropriate thing to do, because it is  
25 inconsistent with her testimony.



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1 I'm not just talking about the slide.

2 THE COURT: What's the inconsistency between "I never  
3 saw a kilo" --

4 MR. FEE: Yes.

5 I'm so sorry.

6 THE COURT: -- and "I only saw gold"?

7 MR. FEE: I'm sorry. I have it here. It is on --  
8 there; the Court is better at this than the parties.

9 I think it's says page 45 to 49, and this is  
10 Mr. Richenthal: To go back a moment to Mr. Menendez's  
11 summation, remember being told this, that Katia Tabourian  
12 didn't remember if she ever saw gold.

13 THE COURT: Go slowly, sir.

14 MR. FEE: Sorry.

15 THE COURT: Just a moment.

16 MR. FEE: He said that's what the government said, and  
17 that's not what she said. Look at what she said -- I don't  
18 remember. To be clear -- this is the key part -- earlier in  
19 her testimony, she seemed to say yeah, I had seen gold. She  
20 didn't distinguish between gold in one form and gold in  
21 another. Later, she was asked did you see a kilo. She seemed  
22 to say in her safe and the Court said did you actually see it,  
23 I don't recall.

24 The sentence that is uncorrectable and inappropriate  
25 is she didn't distinguish -- referring to her earlier

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1 testimony, the part that the defense likes, she didn't  
2 distinguish between gold in one form and gold in another.  
3 Later, she was asked did you see a kilo and she said no.

4 That is false and it is inconsistent.

5 THE COURT: What exactly is the falsity?

6 MR. FEE: Can we put up the transcript, the portion of  
7 the transcript?

8 Oh, I have it. I'm sorry.

9 He's saying, to be clear, earlier in the testimony,  
10 Katia said yeah, I had seen gold. He's now referring to the  
11 part the defense showed of Katia's testimony.

12 THE COURT: All right. Let's just make sure we're on  
13 the same wavelength.

14 MR. FEE: Yes.

15 THE COURT: You're arguing that she said she saw it  
16 years and years ago.

17 MR. FEE: A kilo. A kilo, one kilo.

18 THE COURT: Oh, I'm sorry. Yes.

19 MR. FEE: The whole point of Mr. Richenthal's argument  
20 here is that she didn't, when she was asked my question about  
21 did you see a kilo, Mr. Richenthal has told the jury, in that  
22 portion of the testimony, Katia did not distinguish between  
23 gold in one form and gold in another. Only later she was asked  
24 did you see a kilo. That is false.

25 MR. RICHENTHAL: Your Honor --

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1 THE COURT: Just a moment. Let me make sure I  
2 understand this.

3 MR. FEE: Yes.

4 THE COURT: Put that up again. Put up what you were  
5 just showing me.

6 MR. FEE: I wasn't. It's the government's slide, I  
7 think, he wanted to see.

8 You wanted to see the blue slide from the government,  
9 your Honor?

10 THE COURT: Yes. I wanted to see the summation and  
11 the testimony.

12 MR. FEE: I'm sorry. Yes.

13 THE COURT: You're arguing that she said she had seen  
14 a kilo bar years and years ago. Richenthal is then pointing  
15 out that her testimony was, later, that she didn't recall  
16 whether she saw a one-kilo gold bar in the safe.

17 MR. FEE: That is what he's doing on the slide.

18 THE COURT: I don't see any inconsistency there.

19 MR. FEE: Yes. Let me do a better job explaining  
20 that. Put aside what's on the slide.

21 What you described is what this slide is doing.

22 THE COURT: And that's what the argument was.

23 MR. FEE: No. There's another argument. There was an  
24 argument about -- the thing that I was referring to, he  
25 misstates. And this is what I mean, on the real time, 45 of

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1 59.

2 THE COURT: All right. Pull it up.

3 MR. FEE: It's on the real time only, your Honor.

4 This is the argument from the summation.

5 THE COURT: All right. Let me get it.

6 MR. RICHENTHAL: Your Honor, can I try to, maybe --

7 THE COURT: Yes.

8 MR. RICHENTHAL: There's lots of case law about  
9 arguments of lawyers not being evidence. The Court has told  
10 the lawyers arguments of lawyer are not evidence. I think I  
11 personally told the jury six times arguments of lawyer are not  
12 evidence. I think I told them three times if I get something  
13 wrong, they should check the record. So if I misspoke, it  
14 doesn't matter.

15 But let's be clear. The point of my remarks are not a  
16 single sentence. They're a point, that Ms. Tabourian's  
17 testimony is unclear whether she ever saw a kilo of gold. And  
18 that's true. It's unclear. Now, I want to be pointed about  
19 this. The defense is entitled to argue it's clear. They are.  
20 I'm entitled to argue it's not. That's literally why we have  
21 lawyers making arguments. There is, to my knowledge, no basis  
22 in case law to point out a single sentence in rebuttal and say  
23 that single sentence in rebuttal compared to a single sentence  
24 in a witness's testimony arguably is inconsistent and so the  
25 government lawyer, or the defense lawyer for that matter, did

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1 something wrong.

2 THE COURT: Fair enough.

3 MR. RICHENTHAL: That's all that happened.

4 THE COURT: Fair enough.

5 Let me see the pagination. I have it up. 40 what?

6 MR. FEE: It's 45. I'm sorry, your Honor. And it's  
7 in a paragraph beginning, "Now, to go back a moment to  
8 Mr. Menendez's summation," and then it's specifically the  
9 sentence beginning "to be clear."

10 THE COURT: No. I'm at 45. Go ahead.

11 MR. FEE: There you go.

12 First of all, *U.S. v. Murray*, in the Second Circuit,  
13 is the case that says you cannot unfairly make an argument.

14 THE COURT: Sir, what on page 45 do you want me to  
15 look at?

16 MR. FEE: "To be clear, earlier in her testimony she  
17 seemed to say yeah, I had seen gold."

18 THE COURT: Are you reading from 45?

19 MR. FEE: Yes, yes. Beginning, "to be clear."

20 THE COURT: Just a moment.

21 45, what line?

22 MR. FEE: Line -- I'm sorry -- 11.

23 THE COURT: No. My 45:11 says Mr. Fee said this  
24 either yesterday or maybe the day before.

25 MR. FEE: I'm not sure I know how to tell you the

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1 right page from the real time, your Honor.

2 THE COURT: Read to me what you're reading.

3 MR. FEE: The government has it up. I don't know if  
4 they're better at it than I:

5 "To be clear," this is Mr. Richenthal's words on the  
6 real time. "To be clear, earlier in her testimony she seemed  
7 to say yeah, I had seen gold. She didn't distinguish between  
8 gold in one form and gold in another. Later, she was asked did  
9 you see a kilo. She seemed to say in her safe, and the Court  
10 said did you actually see it?"

11 So he's referring, in the first part of what I read --

12 THE COURT: All right. I'm going to pierce through  
13 this.

14 Richenthal is right. It's arguments of lawyers. It's  
15 a word. I'm not going to go back and instruct them anything in  
16 regard to what the lawyers said or didn't say. It's arguments.  
17 It's acceptable. The jury knows that these are simply  
18 arguments.

19 MR. FEE: Your Honor, there's one more, and eventually  
20 there is relief. There's a surrebuttal, and there's case law  
21 on this.

22 THE COURT: Not on the basis of the lawyer like this,  
23 no, especially when he's saying -- what he's trying to do is  
24 say she said she saw it and now she's saying she doesn't  
25 recall. That's perfectly OK.

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1 MR. FEE: I disagree that that's what he was saying  
2 there, your Honor.

3 THE COURT: Let me tell you. If you want a ruling,  
4 the ruling is there's no surrebuttal on the basis of what  
5 you've told me so far.

6 Next point.

7 MR. FEE: Next point. He said, he made this point  
8 about Michael Critchley. He pointed out again to the  
9 summation -- I don't know if the government has the slide,  
10 slide 4 of the rebuttal slides.

11 Here. I would read it. You can see it. He's making  
12 an argument in response to the first sentence there: "Bob made  
13 one phone call about a case that had been presented to him as  
14 an abusive prosecution."

15 And then they put up the transcript of a portion of  
16 Mr. Critchley's testimony, where Mr. Critchley was being asked  
17 if he had ever talked about selective prosecution. And then  
18 the argument Mr. Richenthal is making is that Mr. Fee is  
19 telling you something that did not happen, it's not in the  
20 evidence. And why is this particularly unfair in rebuttal is  
21 in Mr. Critchley's testimony in this case, he testified twice  
22 that he and Bob discussed that this was an abusive prosecution.  
23 So it's the literal phrase used in the summation that  
24 Mr. Richenthal is arguing was not said by Mr. Critchley. And I  
25 agree. Lawyers make arguments, but a rebuttal summation poses

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Rebuttal - Mr. Richenthal

1 a danger of this sort of tactical misstatement.

2 MR. RICHENTHAL: But your Honor --

3 THE COURT: Sir, are you raising the distinction  
4 that's been in the testimony between abusive prosecution and  
5 selective prosecution?

6 MR. FEE: I'm raising the unfairness of Mr. Richenthal  
7 putting this before the jury, the portion where Critchley  
8 doesn't say abusive prosecution, and saying Mr. Critchley never  
9 said abusive prosecution. And this is what Mr. Richenthal  
10 argued:

11 "When Menendez's counsel" -- and this is page 41, line  
12 2, on ours. This is Mr. Richenthal's words:

13 So when Menendez's counsel asked you to assume that  
14 Menendez called Grewal because he learned from Michael  
15 Critchley that there was an abusive prosecution, that isn't so,  
16 because Michael Critchley didn't say it was so.

17 MR. RICHENTHAL: Your Honor, not only is that a fair  
18 argument, it is undisputed. Mr. Critchley's own testimony is  
19 he did not tell Senator Menendez what he thought. It was a  
20 two-minute phone call, and views were not exchanged. This is,  
21 again, not even just fair argument, although that's enough to  
22 deny this claim. It's literally in the record. This is what  
23 rebuttals are. I'm placing in context the argument that  
24 Mr. Menendez allegedly called Mr. Grewal because --

25 THE COURT: Look, I'm going to allow the argument.



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Rebuttal - Mr. Richenthal

1 It's a fair argument based on the text that I see in front of  
2 me, and if you're making a motion for a surrebuttal, it's  
3 denied.

4 MR. RICHENTHAL: Can I just also note for the record,  
5 page 41 of real time, I said, precisely because I am well aware  
6 of the distinction between abusive and selective, I literally  
7 said, he, referring to Mr. Critchley, thought the case  
8 shouldn't have been brought. He never said it was  
9 discriminatory. That's correct, and it's precisely my  
10 argument.

11 THE COURT: The argument here is within the bounds of  
12 fair argument.

13 Take a few moments.

14 (Recess)

15 THE COURT: Just so the record is clear, Mr. Fee, you  
16 had an objection to the request for a surrebuttal, and it's  
17 denied. But you have the objection.

18 MR. FEE: Thank you, your Honor.

19 THE COURT: In the event of conviction, it can be  
20 raised.

21 (Jury present)

22 THE COURT: You may continue, Mr. Richenthal.

23 You may be seated in the courtroom.

24 MR. RICHENTHAL: Welcome back.

25 I think we left off on a slide about conspiracy, case

O7bWmen3

Rebuttal - Mr. Richenthal

1 law, and then I said that -- excuse me, instructions. And I  
2 said that I would then move to Section 219. So that's what's  
3 on your screen now. Section 219 is just lawyer talk for a  
4 public official acting as a foreign agent.

5 Now, you heard in summation that -- and I'm quoting  
6 now the bold line from Mr. Menendez's summation -- "a foreign  
7 agent charge requires proof that the defendant was an agent, a  
8 servant of the foreign principal." Continuing, the judge will  
9 tell you that means acting at the direction and control.

10 Again, if I say anything about the law and it's  
11 inconsistent in any way with what Judge Stein says, you follow  
12 what he says. But I expect what you will hear is not what you  
13 were told. I expect you'll hear what's at the bottom of your  
14 screen. You don't have to be acting at direction or control.  
15 You can be acting at a request.

16 Now, to be clear, as I think Mr. Monteleoni told you,  
17 request has a legal meaning. You're going to hear more about  
18 it. It's not just a mere request. I don't expect you're going  
19 to hear that. But I also don't expect you're going to hear  
20 that literally you have to be acting at the direction. And of  
21 course, that makes sense. When people are paid to do  
22 something, they're not acting at the direction. They're not,  
23 like, a marionette doll. They're being paid to do it. It's  
24 not a mere request. And you know that that's what happened  
25 here.

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Rebuttal - Mr. Richenthal

1           Now, I've talked a bit about what witnesses said.  
2 I've talked about some of what you've seen. I want to talk  
3 about some of what you were told; that is, some of the  
4 arguments you were asked to accept. I'm not going to talk  
5 about all of them, but I want to spend some time on a few of  
6 them. I'm going to spend more time on some and I'm going to  
7 spend less time on others.

8           Now, we've heard a lot about cash in this case. I am  
9 not going to go back and tell you what you heard before. But I  
10 do want to say, first, that even if every single dollar of cash  
11 in this case went poof, literally disappeared, didn't happen,  
12 the defendants would still be guilty on every count, because  
13 there's still the Mercedes. There's still the fake job for  
14 Nadine. There's still the fake mortgage loan. And there's  
15 still all the small stuff Mr. Monteleoni talked about, but even  
16 if you ignored the small stuff and ignored the cash, you still  
17 have more than enough to find the defendants guilty. And let's  
18 be clear. You know that all that other stuff was also  
19 obviously bribes. Mr. Monteleoni told you about the timing,  
20 the special treatment, the secrecy. Mr. Fee kept saying the  
21 cash is the whole case. I think that's literally a quote. I  
22 may have gotten it slightly wrong, but he said, in substance,  
23 at least once, the cash is everything. The cash is the whole  
24 case.

25           Now, it's part of the case. You might even conclude

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Rebuttal - Mr. Richenthal

1 it's an important part of the case; that's up to you. But it's  
2 damn well not the whole case. Of course, it also didn't go  
3 poof. It does exist. So let's talk about it briefly.

4 I want to return to some basic fact, not everything  
5 you've heard about the cash, just some fundamental facts you've  
6 learned over the past few months.

7 Let's go to the next slide.

8 All right. First, this is Robert Menendez's jacket.  
9 Now, it's our burden, ladies and gentlemen. Everything I say  
10 about a basic fact, I'm talking about what the evidence shows.  
11 But I don't think this was even reasonably disputed. This was  
12 Robert Menendez's jacket. There's an envelope in it. It's  
13 sealed. It says \$10,000 on it, under the tape; that is, the  
14 writing is under the tape. And on the tape, on the sticky  
15 side -- that is, the part you put down -- are Fred Daibes's  
16 fingerprints. And what's inside this envelope? \$10,000 in  
17 cash, just like it says on the outside.

18 Now, what do you know about that cash?

19 You know it could not have been withdrawn any earlier  
20 than October 21, 2020, because that's when at least one of the  
21 bills in this sealed envelope was first put into circulation.  
22 This cash could not have been withdrawn from the bank, never  
23 mind given to Menendez, any earlier than October 21, 2020.

24 Why does that matter?

25 Because that's when Daibes learned that Menendez might

O7bWmen3

Rebuttal - Mr. Richenthal

1 have the opportunity to do what Daibes was desperate for him to  
2 do. That's right before the federal election. That's right  
3 before the change in administration. This is not money Robert  
4 Menendez withdrew from his bank accounts. It's not money that  
5 Nadine Menendez withdrew from her bank accounts. It's Fred  
6 Daibes money, given to Robert Menendez.

7 Now, I could stop there, because that envelope is  
8 enough to convict both Menendez and Daibes, because you know  
9 the timing. You know the special treatment. You know the  
10 secrecy. I'm not going to stop there, but I could, because  
11 that envelope is enough. By itself, you could convict both  
12 Daibes and Menendez. It's an envelope of cash, given from  
13 Daibes to Menendez, at the time when Daibes and Menendez  
14 learned they might have the opportunity to do what they both  
15 wanted done.

16 That is a serious problem for the defense.

17 Now, again, the defense has no burden. I cannot  
18 emphasize that enough. They have no burden, but when they make  
19 arguments, you can look at them. You can scrutinize them. You  
20 shouldn't just blindly accept them. So let's talk about what  
21 you heard.

22 This is what Mr. Fee told you, right? He said I think  
23 this evidence suggests that Nadine, from wherever she got the  
24 cash, put this in the jacket.

25 Now, first, from wherever she got the cash? That's

O7bWmen3

Rebuttal - Mr. Richenthal

1 Fred Daibes cash.

2 But second, this is Nadine's cash in Menendez's  
3 jacket?

4 Let's go to the next slide.

5 Let's stop there.

6 Now, you may have remembered that the argument Mr. Fee  
7 made -- I think Mr. De Castro actually made a version of this  
8 as well -- is that this cash was given to Nadine during lean  
9 times. Well, first, fall 2020 were not lean times for Nadine  
10 Menendez and Robert Menendez. Right? She had trouble with her  
11 mortgage in 2019 -- until Hana paid it off for her. Maybe  
12 those are lean times. This is not lean times.

13 Now, second, as I've said, the idea that you're being  
14 asked to accept here is that Daibes gives an envelope of cash  
15 to Nadine, and Nadine decides to store it in Robert Menendez's  
16 jacket breast pocket. Now, we live in reality, and that  
17 doesn't make any sense at all. But if you thought it's  
18 possible, look at the right side of the photo. That's another  
19 envelope in the same jacket. And whose fingerprints are on  
20 that one? It's not Nadine's. It's Robert Menendez's. So now,  
21 she doesn't just put it in his jacket pocket; it happens to be  
22 there's another envelope, also in the jacket, with his own  
23 fingerprint on it.

24 By the way, side note. If this cash was for lean  
25 times -- that is, the idea she's going to use it -- why is it

O7bWmen3

Rebuttal - Mr. Richenthal

1 sealed? Remember, October 21, 2020. OK? Seized June 16,  
2 2022. It's never used. It's never used.

3 By the way, also, how could Fred Daibes give money to  
4 his buddy's wife, secretly? That's bizarre, but even if that  
5 happened, if it's this secret thing, she decides, you know how  
6 I'm going to keep the secrecy? I'm going to stick it in his  
7 breast pocket coat.

8 Now, that's the fingerprint, by the way, that I was  
9 referring to. That's Menendez's fingerprint on the other money  
10 in the same jacket.

11 So let me just return to something I said a few  
12 minutes ago, the suggestion that you need a video to know what  
13 happened, you need a recording to know what happened. Do you  
14 have any doubt that this money was given to Robert Menendez by  
15 Fred Daibes after October 21, 2020? Now, the standard is  
16 beyond a reasonable doubt. That's not no doubt, but I'm  
17 actually asking a different question. Do you literally have  
18 any doubt? No. There's no other way this money ends up in  
19 that jacket. You live in reality.

20 But let's zoom out; that is, let's zoom out from the  
21 jacket to where the jacket is. Where is it? It's here, bottom  
22 of your screen. Right? That's the closet bar. The top is the  
23 closet shelf. You see the yellow bag? That is the famous  
24 Forever 21 bag. It's quite literally inches from the jacket.  
25 Literally. What's in it? \$95,000 in cash. Some of that cash

O7bWmen3

Rebuttal - Mr. Richenthal

1 is banded together in bank wrappers, Chase Bank wrappers.

2 Now, Mr. Fee spent a tremendous amount of time trying  
3 to convince you that this yellow bag's cash is Nadine  
4 Menendez's cash. That is truly unbelievable. Put aside for a  
5 second that it's inches from Menendez's jacket, it's also feet  
6 from his other clothes, by the way, which, if you recall,  
7 contain, like, among other things, boots with more cash in it.  
8 It's inches from the envelope with Menendez's own fingerprint  
9 on it.

10 Now, remember, there is a reason you're being asked to  
11 assume that this is Nadine's cash. Because even if you  
12 accepted Russell Richardson's wildly unfounded assumptions  
13 about what happened in the past, just accepted them blindly,  
14 unless this cash goes poof, even his assumptions don't account  
15 for all the cash. They just don't.

16 So, should the cash go poof? What's the basis to  
17 assume this is Nadine's cash? Apparently the basis is it's in  
18 a yellow bag printed with the words Forever 21. Now, yes,  
19 Nadine was a joint signatory on a college checking account.  
20 And yes, Nadine's adult daughter Sabine apparently shopped at  
21 Forever 21. Does that mean that no one else is allowed to use  
22 that plastic bag? Many people have plastic-bag stashes in  
23 their homes. Are you only allowed to use the ones you got from  
24 the store? Do you really think if Nadine was hiding cash from  
25 Robert Menendez she would put it in a yellow Forever 21 bag?



O7bWmen3

Rebuttal - Mr. Richenthal

1 It's not even filled with clothes. It's not sealed up. It's  
2 just in his jacket with envelopes of cash with his fingerprints  
3 on it.

4 By the way, I mentioned that it's wrapped, in part,  
5 with Chase Bank wrappers. Well, Nadine had a Chase Bank  
6 account at some point. You know that from the evidence, but  
7 the records show she never withdrew anything like this, and  
8 that the account was closed months before those money bands  
9 were stamped, because the money bands, in part, have dates on  
10 them. So the defense seems to be asking you to accept that  
11 Nadine Menendez magically got \$95,000 in cash from the bank  
12 account she never withdrew that much from, and then she decided  
13 to put it here.

14 Now, remember, you've heard a lot about the closet;  
15 I'm not going to talk about the closet. You've heard about her  
16 safe deposit box. That's not where this is. This is the  
17 basement, yet the story is she put it there, for no reason at  
18 all. Because there's no other reason for her to put it there.  
19 She has plenty of space in the closet. That's nonsense. It's  
20 not, like, an assumption that you should reject. It's  
21 literally nonsense. It defies logic. It defies evidence. It  
22 makes no sense at all.

23 Now, in opening statement, Menendez's counsel actually  
24 seemed to suggest all of the cash in the basement was  
25 Menendez's. Go to the next slide. I'm quoting: "The cash

O7bWmen3

Rebuttal - Mr. Richenthal

1 that was found in the basement of Nadine's home was the  
2 senator's cash."

3 This is in the basement of the senator's home. Now,  
4 they told you something different at the end of this trial, but  
5 the something different is not possible. We have the burden,  
6 but this new argument, it's crazy.

7 By the way, speaking of, like, new arguments versus  
8 old arguments, you heard so much in Mr. Fee's summation about  
9 how the government allegedly changed statements during the  
10 trial, changed arguments. Well, that's wrong, and you know  
11 it's wrong because he spent five-plus hours talking and he  
12 didn't find a single statement about the facts or about the  
13 evidence in Mr. Monteleoni's summation that was wrong. Not  
14 one. Or Ms. Pomerantz's opening. Because the arguments  
15 haven't changed because the evidence hasn't changed. The facts  
16 haven't changed.

17 To be clear, it would be OK if the arguments changed.  
18 They're just arguments. What a lawyer says doesn't matter.  
19 But they haven't changed because the truth of what happened  
20 between 2018 and 2023 is what happened between 2018 and 2023.  
21 It's been true since it happened. You learned over the past  
22 two months what happened.

23 Very quickly, Mr. Fee also suggested, well, maybe  
24 Nadine had this cash for no reason at all, but, you know, she  
25 lived her life outside the banking system. I think that's

O7bWmen3

Rebuttal - Mr. Richenthal

1 close to a direct quote.

2 There it is, at the top of the screen: "Lived her  
3 life largely outside of the bank system. She wasn't using  
4 banks very much at all for decades."

5 All right. Well, look at Menendez's own financial  
6 disclosures. These are just examples. They're all in  
7 evidence. She has one, two, three, four, five bank accounts in  
8 2020.

9 Let's look on the right. She's got one, two, three,  
10 four, five bank accounts in 2022. By the way, these are  
11 Menendez's disclosures, meaning he knows his wife has bank  
12 accounts, meaning he can't possibly think it's her cash,  
13 because he knows that that's not what she does. You've heard a  
14 lot of evidence about Nadine's family gold. Did you hear any  
15 evidence that Nadine hoards cash? Any evidence at all? No.  
16 Zero. It's your job to look at the record. You won't find it.  
17 But even if you want to defy reality and assume the yellow bag  
18 is Nadine's cash, that doesn't matter.

19 Let's zoom out more.

20 Stop.

21 What are you looking at? You're looking at the TD  
22 Bank envelopes in the house and the safe deposit box. What do  
23 you see? They are identical to the one that I showed you a few  
24 minutes ago. Every single envelope on this slide has Fred  
25 Daibes's fingerprints on it.

O7bWmen3

Rebuttal - Mr. Richenthal

1 By the way, I said in the house and safe deposit box.  
2 This actually may be just the house. In any event, every  
3 single envelope in this photograph has Fred Daibes's  
4 fingerprints on it. And one, which was found in the closet,  
5 inside the safe that you've heard so much about, also has  
6 Menendez's fingerprints on it. And every one of them, as I  
7 told you, had at least one bill withdrawn in fall 2021 or more  
8 recently. Every single one.

9 Now, Mr. Fee seemed to suggest this must merely be  
10 gifts. I've already explained to you why that makes no sense.  
11 Nadine wasn't in lean times in fall of 2020. Her husband's  
12 best friend wasn't giving her gifts for no reason at all, and  
13 if he was, Menendez sure as heck would have known about it.  
14 But also, if they're gifts, which presumably means they're  
15 handed to Nadine or at least handed from Robert Menendez to  
16 Nadine, wouldn't her fingerprints be on them? How many of  
17 these envelopes have Nadine's fingerprints on them? Zero.  
18 Zero.

19 In short, ladies and gentlemen, although the lawyers  
20 have asked you to do math a lot in this case, you don't have to  
21 do math. You don't have to look at bar charts, you don't have  
22 to look at summary charts to figure out that this cash came  
23 from Fred Daibes, to figure out that this cash was given to  
24 Robert Menendez, to figure out when it was given to Robert  
25 Menendez. Fall 2021 -- excuse me, fall 2020 and forward. And

O7bWmen3

Rebuttal - Mr. Richenthal

1 there's more than \$80,000 in those envelopes. One of them  
2 would be sufficient to convict Menendez and Daibes of bribery.  
3 Just one. You've got a lot more than one.

4 Now, Mr. De Castro pointed to one that's not on this  
5 slide. Right? He pointed to the one with Fred Daibes's return  
6 date on it. Now, let's just be clear. That envelope has Fred  
7 Daibes's driver's fingerprints on it, Mr. Pilot. And it has  
8 Fred Daibes's DNA on it, so it obviously also came from Fred  
9 Daibes, although this one was given by the driver. And you  
10 actually know when -- Mr. Monteleoni talked about that -- that  
11 is, that Fred Daibes gave Robert Menendez through his driver.

12 Now, that envelope, if we go to the next slide, is  
13 this envelope. Now, where was this envelope found? The  
14 closet. In the safe. Again, this is the safe that you've  
15 spent a lot of time trying to be convinced Robert Menendez knew  
16 nothing about.

17 So Mr. De Castro seemed to give you a different  
18 argument than Mr. Fee. He seemed to suggest, well, yeah, this  
19 was probably given to Menendez, not Nadine. That seems clear  
20 as day, doesn't it? But he made a different argument. He said  
21 because you cannot be sure when it was given, you cannot  
22 conclude it was a bribe. He said it over and over. He said it  
23 again today too.

24 Now, first, you know it was not given any earlier than  
25 June 10, 2021. You don't know exactly when, but you know it

O7bWmen3

Rebuttal - Mr. Richenthal

1 couldn't be earlier than that, because none of the cash is from  
2 earlier than fall 2020, and you know what was going on between  
3 fall 2020 and summer 2021. Menendez was repeatedly trying to  
4 influence Fred Daibes's criminal case.

5 And by the way, I don't expect you're going to hear in  
6 the judge's instructions that you need to figure out precisely  
7 when a bribe was given, like, literally the date, time, hour.  
8 I don't expect you're going to hear anything like that. I  
9 expect you're going to hear was a bribe given within the time  
10 period of the charges? Every single envelope I have shown you  
11 is within the time period of the charges. Every single one.

12 Now, Mr. De Castro argued that even if these were  
13 gifts to Mr. Menendez and even if they were during the time  
14 period of the charges -- and they were to Menendez and they  
15 were during the time period of the charges -- still could not  
16 be bribes. He called them gifts or get well gifts.

17 OK. Now, first, these are all between fall 2020 and  
18 June 2021. All of them. That's a particular time period with  
19 particular things that Fred Daibes wants from Robert Menendez.  
20 They have been friends for decades. All of these envelopes are  
21 not from decades. They're from the heart of the case as to  
22 Fred Daibes and Robert Menendez.

23 By the way, side note.

24 Can we call up Government Exhibit 10E-4.

25 Remember this financial disclosure form? There are

O7bWmen3

Rebuttal - Mr. Richenthal

1 several in evidence. You know what's not on it? Any of these  
2 alleged gifts. Zero.

3 You know what else is not on it?

4 Can we scroll, please. Keep going. Stop.

5 Remember these, the wedding gifts? Do you see Fred  
6 Daibes's name? To be clear, they were friends for decades,  
7 maybe Mr. Daibes gave him a gift. It's not here, but put all  
8 that aside for a moment. Every one of these, as I said, was  
9 between fall 2020 and 2022, the day of the search. I may have  
10 misspoken and said 2021, but it's the heart of the scheme --  
11 2020 and 2022. Every one.

12 Now, ladies and gentlemen, we have the burden, but  
13 that home was searched. Where are the other gifts if  
14 Mr. Daibes was so generous as to give \$10,000 cash envelopes?  
15 Where are they? They're definitely not in the home. They're  
16 definitely not in Nadine's safe deposit box. Where are they?  
17 Mr. Daibes may well have given Mr. Menendez gifts. That's not  
18 what you're looking at in the chart of envelopes -- even if you  
19 assumed, bizarrely, that the gifts he gives are literally  
20 sealed envelopes of cash, and there's no evidence he gives  
21 those kinds of gifts to anyone at all.

22 The bottom line on this is you've got hundreds of  
23 thousands of dollars -- hundreds of thousands of dollars -- in  
24 cash and gold between Daibes and Menendez. And you know that  
25 all of that cash, all of these envelopes, are in a very

O7bWmen3

Rebuttal - Mr. Richenthal

1 specific time frame. Very specific. They start within days of  
2 the presidential election. Is that just a coincidence? Do  
3 they become closer friends in late October 2020? Or did Daibes  
4 want something from Menendez? Something, by the way, you don't  
5 just ask a friend to do, because it's dangerous, because it's  
6 criminal, because it's wrong, and you both know it.

7 They were friends. They may have traded gifts. These  
8 things -- this cash and the gold -- it was not friendship. It  
9 was not gifts. It wasn't goodwill in the hope that someday  
10 Robert Menendez can help Fred Daibes. It was today. I need  
11 help today. The presidential election is in a week. This is  
12 the thing I want. Here's lots of cash. The dates alone tell  
13 you what happened. And that's not an assumption or inference.  
14 The dates are not in dispute.

15 Now, I mentioned the closet and the safe, so let me  
16 just pause for one second on the closet and the safe. You guys  
17 have heard a ton about this. I'm not going to spend too much  
18 time on the closet and the safe. By the way, one reason is you  
19 could just ignore it and still have found the defendants  
20 guilty. But just to pause, everything that I've said so far is  
21 not reasonably subject to doubt. Text messages exist, like the  
22 ones with Vasken Khoroizian. The photos exist. The cash and  
23 the gold exist. There's no dispute where they were found, no  
24 dispute about the fingerprints, no dispute about the DNA.  
25 There's no dispute about the serial number cash tracing or the



O7bWmen3

Rebuttal - Mr. Richenthal

1 cash packaging.

2 It's our burden, but those things aren't reasonably  
3 subject to dispute. But Mr. Fee nevertheless argued you should  
4 just ignore argue all of that. Indeed, he argued you should  
5 ignore everything in the case because, according to him, two  
6 things happened in the first week of trial that you should  
7 conclude call into question everything you saw in the next six  
8 weeks of trial.

9 Now, that's, with respect, kind of a silly argument,  
10 but let's just take it head on. One of those two things was  
11 the embassy information. I'm sure you remember that. The  
12 argument seems to be that -- and Mr. Lustberg, by the way, made  
13 a version of this argument too. The argument seems to be that  
14 the embassy information was public. It's no big deal. The  
15 fact that we presented evidence about it and then they tried to  
16 demonstrate it was public means that everything in the case  
17 should be disbelieved.

18 Mr. Fee kept referring to the quality of the evidence.  
19 He kept saying the quality of the evidence. OK. So let's talk  
20 about the embassy information.

21 Now, before I just get to this exact, let's pause for  
22 one second, I want to focus you on this. The embassy  
23 information is a truly egregious betrayal of Menendez's trust  
24 by the public. It's not a side note. It is an egregious  
25 abuse. It wasn't public. He knew it, and he knew it was going

O7bWmen3

Rebuttal - Mr. Richenthal

1 to Egyptian officials. This is what you were told: You can  
2 find it in 2018. It was public. Period.

3 And you heard this through trial to too. You heard  
4 this during cross-examination.

5 Let's go to the next slide.

6 This is the basis for it allegedly being public. Now,  
7 let's just pause there. First, the exhibit doesn't show that.  
8 It just doesn't. Look at it. OK? This is a sensitive but  
9 unclassified report first issued in April 2020, later  
10 released -- that's why those words are crossed out; you've  
11 heard about that -- and then available years later. Right? In  
12 2018. It's from April 2016. It's available April 2018.

13 (Continued on next page)  
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25

O7B3MEN4

Rebuttal - Mr. Richenthal

1 MR. RICHENTHAL: So yes, what's in this document was  
2 public in April 2018. But the information is from April 2016.  
3 It ain't the same information Menendez gave out. And that  
4 matters. Mr. Tate explained why it matters, and your common  
5 sense tells you why it matters.

6 That's in part what's on your screen. He explained to  
7 you things start confidential, sensitive, but over time, and  
8 you know this from your common sense, the facts on the ground  
9 change. It's no longer sensitive. It gets released later.

10 This wasn't catching the government in some sort of  
11 mistake, although a trial is not a contest. This was trying to  
12 convince you of something that is demonstrably false. Now,  
13 let's go to the next slide.

14 Let me pause there. You also heard it doesn't matter,  
15 the embassy information doesn't matter because Mr. Tate and  
16 some other people, they traveled on diplomatic passports. I'll  
17 deal with that in one second. But also what were you told by  
18 Mr. Tate? What matters is not just the U.S. citizens working  
19 at the embassy, it is the Egyptian staff working at the U.S.  
20 embassy. And they take efforts to not tell the Egyptian  
21 government.

22 But what Menendez shared wasn't just about the U.S.  
23 citizens. You know that.

24 Let's go to the next slide. You also know why it  
25 matters. Because as Mr. Monteleoni explained to you while

O7B3MEN4

Rebuttal - Mr. Richenthal

1 talking about the evidence in this case, like a jigsaw puzzle,  
2 one piece may not tell you a lot, 1,000 pieces tells you  
3 everything. This is a piece. It's not everything. But it is  
4 a piece. That's why it's sensitive. That's why it's released  
5 years later, not in real time.

6 Let's go to the next slide. Actually, let's go back,  
7 I'm sorry. Could we go to Government Exhibit A-101-6. Can we  
8 blow up the middle.

9 Let's stop there. So this is what Menendez sent his  
10 girlfriend. So first, as I said to you, it notes Egyptians,  
11 not just U.S. citizens. It literally says locally employed  
12 staff. Then, if there were any doubt what's going on, it  
13 clarifies, most are Egyptians working at the embassy. This is  
14 what he sent.

15 Now, the idea that you are being asked to accept is  
16 this was public. Okay, not true, I've already demonstrated it.  
17 But you are being asked to accept something else. That this  
18 was like the same thing that was available on Google.

19 Did Menendez tell his girlfriend to use Google? By  
20 the way, the internet works in Egypt. There is evidence of  
21 that. You heard about Alborsaa News. If the Egyptians could  
22 use Google, which they could, why are they getting it from  
23 Menendez? Why is he sending it to his girlfriend? Why isn't  
24 his girlfriend saying like, dude, I could use Google. I don't  
25 really need it. Thanks.

O7B3MEN4

Rebuttal - Mr. Richenthal

1 Did he get it from Google? No. He got it from the  
2 State Department, and they were so concerned about it, they  
3 literally needed a reason. Did they say, well, I'm concerned  
4 about it, even though I could get it on Google? No. Because  
5 this is the keys to the kingdom, ladies and gentlemen. This is  
6 the real stuff. This is the real-time information. This is  
7 what's at the American embassy. That's what Robert Menendez  
8 wrote. This is what's at American embassy.

9 They got it from him because they couldn't get it  
10 another way, and he knew it. Just absorb what you're looking  
11 at for a second. A sitting U.S. senator is giving sensitive  
12 information to a foreign nation through his girlfriend.

13 Let's back out. Go to the next.

14 Now, there was also a suggestion that it stopped  
15 there. Meaning it went from Menendez to Nadine, that was the  
16 end of it. Now, even if that were true, this is devastating  
17 proof that Menendez put the interests of Egypt above those of  
18 the United States.

19 But you know it's not true because Mr. Monteleoni  
20 showed you what happened next. Nadine sent it to Will Hana,  
21 and Will Hana sent it to an Egyptian official. Because this  
22 request came from Egypt. And like everything else with Egypt,  
23 it was secretly funneled through Hana and through Nadine and  
24 through Menendez and back again.

25 I'll talk more about Egypt. But why did that happen?

O7B3MEN4

Rebuttal - Mr. Richenthal

1 Put aside the Google idea. Why didn't Will Hana just say, Bob,  
2 listen, can I have some of this information? You know why.  
3 This is really important stuff. They need to separate his  
4 getting it from the Egyptians getting it. What's the link?  
5 Nadine and Hana. What do they have in common? Hana promised  
6 her money. Is there any explanation in the world for what  
7 happened there other than that?

8 Menendez didn't become a senator last year, ladies and  
9 gentlemen. He's literally a leader of the Senate Foreign  
10 Relations Committee. Do you honestly think he thought this was  
11 no big deal? And if he did, why did he send it to his  
12 girlfriend? Had he forgotten Hana's phone number? Had he  
13 forgotten Hana's e-mail address? You send it through your  
14 girlfriend when you're trying to keep your fingerprints off it.

15 All right. So, that's the first thing Mr. Fee said  
16 should cause you doubt, all the evidence in the case. First of  
17 all, that is devastating proof of guilt, and you shouldn't  
18 doubt it, but okay, what's the second thing. The blue blazer.

19 You heard a lot about the blue blazer. The argument  
20 is here that Agent Kougemitros made a mistake. Because Agent  
21 Kougemitros made a mistake, everything in this case must be a  
22 mistake.

23 Agent Kougemitros literally did what he should have  
24 done. He looked at photos overnight, remember? And he  
25 corrected himself. And he decided that a blue blazer he

O7B3MEN4

Rebuttal - Mr. Richenthal

1 thought was inside the closet was on the outside of the closet.

2 So the argument is, because Agent Kougemitros was  
3 careful, and a blue blazer was on the other side of the door,  
4 the next six weeks of trial you should ignore.

5 This is an incredibly serious case for the government  
6 and for the defendants. Incredibly serious. That is not a  
7 serious argument.

8 Now, multiple defense counsel also argued that because  
9 the government showed you the cash and the gold first in this  
10 case, you should somehow ignore everything else. That you were  
11 being, I don't know, inflamed about the cash and the gold.

12 Let's pause there for a second. Quid pro quo. This  
13 for that. What's the this? That's the bribes. That's the  
14 cash and the gold. Would it make sense to present it in the  
15 middle of the case? Ladies and gentlemen, you've been here for  
16 two months. Did you stop listening after the first week of the  
17 case?

18 Blue blazer is not outside of the closet. It's on the  
19 door. It is a good example of when lawyers say things, it  
20 might not be right. Doesn't matter what we say. It matters  
21 what the evidence says.

22 But, inside the door, outside the door, heck, on the  
23 bed. Does it call into question anything else you've learned  
24 for two months?

25 And by the way, a blue blazer in the bedroom. Forget

O7B3MEN4

Rebuttal - Mr. Richenthal

1 where. Just in the bedroom. You heard so much about how this  
2 apparently is a bedroom that he doesn't use. Putting aside it  
3 is a bedroom. His blazer is in the bedroom. That's at least  
4 one item of clothing in the bedroom.

5 Mr. Monteleoni suggested the same thing, but is the  
6 argument, like, he's going to take his jacket off, but heaven  
7 forbid the closet is closed, she has to run past him and lock  
8 it? This is nonsense. No one in a real relationship could  
9 think it is real life. Putting aside his fingerprints are on  
10 an envelope inside the closet, inside the safe.

11 Now, this idea that the blue blazer somehow blows up  
12 the case, it's sort of a variation of a longer argument you've  
13 heard a lot about, mainly from Mr. Menendez's team, that  
14 Mr. Menendez isn't just not guilty, he's a victim. He's a  
15 victim of his own wife, he is a victim of Wael Hana, he is a  
16 victim of Fred Daibes.

17 The suggestion seems to be Nadine, working with Hana  
18 and Daibes, secretly collected money, secretly collected gold,  
19 hid it from Menendez, Menendez didn't know anything about it,  
20 and so he's a victim.

21 Well, first of all, if that's true, Nadine Menendez is  
22 definitely guilty. Now, she's not on trial in this case, you  
23 don't haven't to decide if she is. But if that's true, she is  
24 definitely guilty. So are Wael Hana and so are Fred Daibes  
25 absolutely. That's literally what that argument is, right.



O7B3MEN4

Rebuttal - Mr. Richenthal

1 But, are you going to accept that there was a secret  
2 plan to dupe Senator Menendez, that his wife cooked up a scheme  
3 to secretly collect money and gold by invoking his name with  
4 two men, one of whom was his close friend, and he never learned  
5 about it? Because let's be clear about what that means.

6 First it means that she duped her husband, her  
7 boyfriend and now husband, an experienced public official, one  
8 of the most powerful people in the entire U.S. Congress for  
9 5 years. Not a day. Not like during an off part of their  
10 relationship. For 5 years. That's how long this scheme would  
11 have to exist that he would not know about. 5 years.

12 She would have to do it while they're living together.  
13 Literally. She would have to do it while he's tracking her  
14 movements. Let's be clear, it does not matter why he was. He  
15 might have had good reasons to do it. That's not the point.  
16 He was doing it. That's undisputed. So she's also doing it  
17 while he knows where she is.

18 She's doing it involving a Mercedes literally in their  
19 driveway. A Mercedes he knows she cannot afford. I'm not  
20 asking you to assume. You've seen the text messages. He  
21 literally knows she can't afford it. Appears in the driveway.

22 If you believe the duping scheme, that is the blame my  
23 wife defense, that car is magic.

24 And she also does it in a really, really bizarre way.  
25 Really bizarre. She has a safe deposit box, she has a safe,

O7B3MEN4

Rebuttal - Mr. Richenthal

1 but she sticks things in other places, including his own jacket  
2 pocket? And somehow he touches things that go in the safe from  
3 his own friend, Fred Daibes with who, mind you, in this version  
4 of the story, is part of the scheme to dupe him.

5 Now, look, you've learned a lot about Nadine Menendez  
6 in this case. A lot. I'm not making fun of her. But does she  
7 strike you as a diabolical genius who concocts a plan with  
8 Menendez's friend and Wael Hana to dupe him for 5 years,  
9 including when they're living together? You think that she  
10 could have even pulled that off if she tried? You don't have  
11 to answer that question. Why? Because you know she didn't try  
12 because there was no effort to hide from him. Just the  
13 opposite.

14 By the way, if that's what happened, how in heaven's  
15 name do you explain what Menendez actually did. Because  
16 remember, in this version of the story, he doesn't know about  
17 anything, but he keeps acting for the people paying. I'm going  
18 to come back to that.

19 But, as I said earlier, there are facts in the world,  
20 they are not assumptions or guesses, they're facts in the  
21 world. Those are facts in the world he did stuff. Why? He  
22 wasn't part of some secret conspiracy around him. He did it  
23 because he was being paid. And by the way, some of it plainly  
24 he controlled. He didn't make him do it. The ghostwritten  
25 letter? He wrote it and sent it to her. The tell Will I'm

O7B3MEN4

Rebuttal - Mr. Richenthal

1 signing off on a arm sales? He said tell Will. He told her  
2 what to tell Will. Does that sound like she's duping him?

3 Also if there is some scheme swirl around him and dupe  
4 him, how do you explain that Fred Daibes sends him images of  
5 really expensive watches right before acting him to act on  
6 legislation in a chain of communications that Nadine is not on?  
7 How do you explain the New Jersey Attorney General scheme?  
8 Nadine's barely involved in that. Was she whispering in his  
9 ear?

10 So very clear. As I've said to you, he knows all  
11 about the payments, he's taking actions, he's part of it.

12 But you nevertheless heard that on one specific piece,  
13 you kept hearing he doesn't know about the Mercedes, he doesn't  
14 know about the Mercedes.

15 Now, Fred Daibes and the other defendants desperately  
16 need you to believe that Menendez knew nothing. Right. They  
17 have to convince you of that. That's their job.

18 But let's talk briefly about the Mercedes. First of  
19 all, Jose Uribe told you all about the conversations he had  
20 with Robert Menendez. I'm going to talking about Jose Uribe,  
21 but, even if you just ignored him, and you shouldn't, do you  
22 have any doubt, again, that he knew about the Mercedes in his  
23 own driveway? The Mercedes he knew she couldn't afford, the  
24 Mercedes where she said I am going to meet Jose for five  
25 minutes and it appears in the driveway? That's not reality.

O7B3MEN4

Rebuttal - Mr. Richenthal

1           What else isn't reality is part of this idea that  
2 Nadine is duping Robert Menendez. At least one defense  
3 counsel, I think more than one, has asked you to somehow  
4 suggest that the plan was not to bribe Robert Menendez, the  
5 plan was to hire Doug Anton. The plan to kill and stop all  
6 investigation was to hire Doug Anton. I think you heard that.  
7 They said Doug Anton is a lawyer, they want to hire Doug Anton,  
8 it has nothing to do with Robert Menendez. That truly makes  
9 no sense at all.

10           So, first, to stick with the Mercedes, if the whole  
11 plan is just to hire Doug Anton, why are they buying her a  
12 Mercedes at all? You are allowed to hire lawyers. It doesn't  
13 require buying a senator's girlfriend a Mercedes.

14           And second, if the plan is just to hire Anton, why is  
15 Nadine connecting Jose Uribe with Menendez repeatedly? What  
16 does he have to do with it?

17           And third, if he's not involved, why is he contacting  
18 Gurbir Grewal more than once? Why is that happening?

19           I've already explained to you it makes no sense he  
20 cares about discrimination or truckers and that's why he's  
21 calling him. Why is he calling him? Anton is supposedly  
22 working on this. What is Menendez doing at all?

23           There are no answers to these questions I've just  
24 asked you. There are no answers to these questions because,  
25 yes, the evidence showed that early on, the conspirators talked

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Rebuttal - Mr. Richenthal

1 about hiring Anton, and then the plan fell through.

2 Mr. Lustberg acknowledged it failed. It did fail. So then  
3 they turned to bribing Menendez.

4 This goes back to the conspiracy instruction I talked  
5 to you about. If you conclude that the scheme to bribe  
6 Menendez with respect to the New Jersey Attorney General didn't  
7 start in 2018, it started later, and there is plenty of  
8 evidence it started in 2018, but if you conclude it started  
9 later, that's okay.

10 If you conclude that people schemed to bribe him in  
11 2018, which is exactly what the evidence showed, but he wasn't  
12 involved until later, that's okay. You don't have to join at  
13 the same time.

14 And also use your common sense. If you scheme to  
15 bribe a senator, the scheme is step one. The bribing is step  
16 two. They're not going to happen at the same time. That's  
17 what happened here. That's how conspiracies work.

18 All right. Jose Uribe. You heard a lot about Jose  
19 Uribe. Mr. Fee argued the government abandoned him. He's in a  
20 trash pile. Up to you to decide what to make of that. It's a  
21 very odd thing to say.

22 Mr. Monteleoni explained to you in detail how all the  
23 evidence proves the defendants guilty, even if Uribe never  
24 testified. Then explained to you he testified. He told the  
25 truth, and that made even more clear they're guilty. That's

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Rebuttal - Mr. Richenthal

1 not abandoning him.

2 Mr. Fee literally said this. Next slide. Don't  
3 believe him, guilty. Believe him, double guilty.

4 Sort of right, actually. If you don't believe him,  
5 they're still guilty. If you believe him, they're still  
6 guilty.

7 Is the argument we should have presented less  
8 evidence? Is the argument because there is more evidence of  
9 guilt, he is less guilty? This is a serious case. That's not  
10 a serious argument.

11 What else were you asked to accept about Jose Uribe?  
12 Let me pause for a minute. It is a little weird to be talking  
13 to you about whether you should believe Jose Uribe, because it  
14 doesn't matter what I think. It just doesn't. And you saw  
15 him. It's up to you to decide if he is telling the truth. But  
16 did you notice that defense counsel wants to have it both ways?  
17 They called him a liar, but then they also embraced lots of  
18 stuff he said. When he said that he pleaded guilty to bribing  
19 Senator Menendez, that's a lie. When he said I didn't actually  
20 mention the Mercedes in the backyard, that's the truth. That  
21 was the moment the truth happened.

22 Ladies and gentlemen, if Jose Uribe was lying to frame  
23 three men, why would he do it that way? It's bizarre. You  
24 don't have to approve of Jose Uribe. You shouldn't. But does  
25 he strike you as insane? He got on the stand and lied about

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Rebuttal - Mr. Richenthal

1 bribing Senator Menendez? He got on the stand and lied about  
2 Wael Hana's involvement? And then when asked did you talk to  
3 Senator Menendez about the car? He said no. It doesn't make  
4 any sense at all.

5 Let's just talk about one argument you were asked to  
6 accept with Jose Uribe. You were asked to accept that the  
7 reason Jose Uribe said Robert Menendez said I saved your ass  
8 not once but twice was not because Robert Menendez said that.  
9 But because Jose Uribe was supposedly drunk and high and Robert  
10 Menendez wanted to tell him to leave.

11 So, now Jose Uribe is actually double insane. The  
12 story in that version of reality is he is at dinner, drunk and  
13 high -- mind you, there's no evidence of that. If you recall,  
14 he was actually invited to the dinner, he wasn't drinking at  
15 the dinner. That's an utter invention. The story is drunk and  
16 high, he's told to leave, and he decides the way I'm going to  
17 convict Senator Menendez is not to tell him about the Mercedes.  
18 No. I'm not going to say that. I'm going to deny that for  
19 days. But I'm going to say he saved my ass. That is literally  
20 what you're being asked to believe. It is nonsense. It did  
21 not happen.

22 And side note, if it did happen, how did Jose Uribe  
23 fake the text message to Nadine Menendez? Because that exists.  
24 It's not disputed. Also, Sabine is an adult. But Senator  
25 Menendez sends her away so he can turn to a man and say, sir,

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Rebuttal - Mr. Richenthal

1 I'd like to enjoy dinner with my wife and daughter-in-law?  
2 Why?

3 There is no answer to these questions because the  
4 questions don't make any sense because the assumption baked in  
5 doesn't make any sense. It's not what happened. Also saved  
6 your ass twice. Not fought discrimination twice. Not saved  
7 truckers twice. I saved your ass. That literally tells you  
8 everything you need to know.

9 Mr. Lustberg took a different approach. It is a small  
10 thing, but I want to mention it because it's wrong.  
11 Mr. Lustberg told you, you should assume Jose Uribe is lying  
12 because he said he didn't ask Ana to withdraw money from  
13 certain trust accounts, but there are a small number of  
14 withdrawals from the same trust accounts.

15 But, just like Uribe told you, there is evidence that  
16 he asked Ana Peguero to withdraw money from the trust account,  
17 and she instead withdrew it from the operating account. Yes,  
18 there are other small withdrawals from the trust account at  
19 other times. It is a company. There is no evidence of why  
20 they were withdrawn or who did it. It doesn't prove Uribe's  
21 lying. It doesn't prove anything at all.

22 Mr. Lustberg also asked you to accept that Jose Uribe  
23 must be lying because he said "I don't recall" a lot on  
24 cross-examination. Remember there was a comparison of 17 to  
25 100 and something. You probably remember cross-examination.



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Rebuttal - Mr. Richenthal

1 It went on for a really long time, and Jose Uribe was asked a  
2 lot of very precise questions, about things that happened years  
3 ago, that have nothing to do with this case. And he said I  
4 don't recall.

5 This is just one example. Transcript page 3354, he  
6 was asked:

7 "Q. And you collected insurance premiums from Jose Suero and  
8 his company, his company Hoboken First Class Corp for about  
9 three years, correct?

10 "A. I don't recall the exact number of years, sir."

11 That's in the count, that answer. You can get any  
12 transcript, any testimony you want as you deliberate. If you  
13 have any doubt about what happened in this case, you should.  
14 And you will see "I don't recall" was said a lot to bizarre,  
15 precise questions about things that happened years ago that do  
16 not matter.

17 Because what Jose Uribe did recall and fit literally  
18 everything else in the case, was engaging in a scheme to bribe  
19 Robert Menendez.

20 Jose Uribe was also attacked by defense counsel for  
21 helping arrange a fundraiser during the course of the bribery  
22 scheme. But he told you why he did it. On the left side is  
23 what Mr. Lustberg said about the trust. On the right side is  
24 what happened about the trust. That's what I talked about a  
25 couple minutes ago.

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Rebuttal - Mr. Richenthal

1           Go to the next slide. Stop there. You don't need a  
2 slide for this. Why? Because he was asked repeatedly about  
3 the fundraiser. Direct and cross. He told you why he had it.  
4 He told you he had it because he was trying to get closer to  
5 Menendez. That's what he said. And that makes total sense.  
6 Why is he doing a fundraiser for Menendez, a man he does not  
7 know? Because he wants something from him. Because he wants  
8 to get into his circle of trust. Because he's about to bribe  
9 him. He's in the course of scheming to bribe him.

10           The suggestion that the fundraiser is evidence of  
11 innocence is bizarre. The fundraiser out of nowhere is  
12 evidence of a scheme. Jose Uribe literally told you why he did  
13 it.

14           You're entitled to reject all of his testimony if you  
15 want. That part was credible. It was all credible. He did it  
16 because he's part of the scheme. Not because there is no  
17 scheme.

18           And finally, Mr. Lustberg suggested that, well, even  
19 if Jose Uribe told the truth, he didn't talk about Wael Hana in  
20 the scheme.

21           Ladies and gentlemen, you were here. He talked a lot  
22 about Wael Hana in the scheme. He talked about cash and Wael  
23 Hana in the scheme. He talked about meetings with Wael Hana in  
24 the scheme. Mr. Hana is absolutely within his rights to tell  
25 you that those things didn't happen. But Jose Uribe said they

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Rebuttal - Mr. Richenthal

1 happened, and all the messages you've seen make clear they  
2 happened.

3 Your Honor, we're at 1 o'clock. Would you like me to  
4 keep going?

5 THE COURT: How much longer do you have, sir?

6 MR. RICHENTHAL: I've got some.

7 THE COURT: All right. Let's, ladies and gentlemen,  
8 let's take a one-hour lunch break. Be back at 2.

9 (Jury excused).

10 THE COURT: 2 o'clock. Thank you.

11 (Recess)

O7B3MEN4

## AFTERNOON SESSION

2:00

(At the sidebar)

THE COURT: What have the parties found?

MR. MONTELEONI: So, in our research, we don't believe that what has been described by counsel for Mr. Menendez rises to the level that necessitates an inquiry.

The Second Circuit has held in several cases that, first of all, how you handle issues of potential premature deliberation with the jury is best left to the discretion of the trial judge. It is only in unusual circumstances, like in the *Haynes* case, where there is an actual report of a comment on the presumed guilt of a defendant, where here we have nothing. Nothing of that sort here. And it involved an alternate who could have been interviewed without at all affecting jury deliberations. That's the type of circumstances where an inquiry is clearly called for, in many instances of any external influence on the jury, which is much more serious. When it is intra-jury discussions, the Second Circuit has recognized that the very inquiry is intrusive, even if it happens before deliberations, and in many cases a curative instruction is appropriate.

We certainly would have no problem with any further curative instructions regarding avoiding any further -- any even preliminary deliberations about the case or anything like

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1 that.

2 If the Court wished to conduct an inquiry, it is  
3 within the Court's broad discretion. But we think the factors  
4 that the Second Circuit has acknowledged counsel against it in  
5 many cases. Just based on the predicate there was a possible  
6 passing of a piece of paper or just a showing of a notebook  
7 from one juror to another juror just don't rise to the level  
8 where this intrusive inquiry is warranted.

9 And the intrusiveness can also create prejudice  
10 because it really magnifies the significance of what may have  
11 been insignificant incident. That's a quote from the Second  
12 Circuit in *United States v. Abrams*, a 1998 case. 137 F.3d at  
13 704, 708-709.

14 THE COURT: Mr. Weitzman.

15 MR. WEITZMAN: I think the record is quite sufficient  
16 and frankly requires some form of inquiry. I don't think it  
17 needs to be an intrusive inquiry. We've seen multiple  
18 instances where these two jurors have shown each other their  
19 notepads after writing, which I mentioned earlier, and also  
20 passed notes, and it is just of concern to us. I think under  
21 *Haynes*, there should be an inquiry, in light of what we've seen  
22 by multiple witnesses on the defense side.

23 THE COURT: You're both right in *Haynes* and under  
24 *Acosta*, *United States v. Acosta*, 833 F. App'x 856 (2020). But  
25 it's clearly within the discretion of the Court.

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1 I think I should make some inquiry. What do the  
2 parties propose that inquiry be? The issue really is were they  
3 engaged in discussing the case, but I think it's worthwhile  
4 spending a minute or two phrasing what that should be. And it  
5 seems to me, although I'll be guided by the parties, that I  
6 should do this with each of the two jurors separately, and on  
7 the record, but without counsel there. It will be available.  
8 It's 8 and 9 that you were talking about. The woman in the  
9 flower dress and the fellow who wears the knit cap.

10 MR. WEITZMAN: We agree it should be your Honor  
11 without counsel and on the record.

12 THE COURT: I think the government is probably of the  
13 same accord.

14 MR. MONTELEONI: On that, absolutely.

15 MR. WEITZMAN: It should be an open-ended inquiry  
16 without giving them options. Just say we understand that  
17 people have, and I think the phraseology we gave this morning  
18 is I've been informed.

19 THE COURT: Or it's come to my attention.

20 MR. WEITZMAN: That there was some notes passed during  
21 summations and notes you are taking on in your notepad were  
22 also shown to each other. And I'm sure your Honor will put it  
23 best. But essentially, we're asking about the substance of  
24 those communications.

25 MR. MONTELEONI: I think it's highly intrusive to --

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1 THE COURT: I don't think I should ask directly about  
2 the substance because that may be intrusive. But let me just  
3 think for a moment.

4 MR. WEITZMAN: What about to the extent that the  
5 substance concerned summations, the lawyers, the defendants,  
6 then we'd ask that you let us know or advise us.

7 THE COURT: See, the issue with that is if they --  
8 they had a note that said -- certainly not that it would be to  
9 you, Mr. Weitzman -- but this guy's a jerk or something like  
10 that.

11 MR. LUSTBERG: That would have been about me.

12 THE COURT: Not about one of the most famous lawyers  
13 in New Jersey.

14 MR. WEITZMAN: I understand, your Honor.

15 THE COURT: So, that we shouldn't care about. It  
16 seems to me. This guy's a jerk. I don't think it is  
17 discussions.

18 MR. WEITZMAN: Okay.

19 THE COURT: How do I get at that without being  
20 intrusive? That's the issue.

21 MR. MONTELEONI: The line that the Second Circuit has  
22 drawn is that not every comment a juror may make to another  
23 juror about the case is a discussion about a defendant's guilt  
24 or innocence. That comes within the common sense definition of  
25 deliberation.

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1           The question is did you discuss a defendant's guilt or  
2           innocence. After first establishing whether there was even  
3           sharing of notes. And I would just ask that the predicate for  
4           the inquiry, not assume that it necessarily happened.

5           THE COURT: No, no, I don't want to put them on the  
6           spot. Maybe this is putting them on the spot. Were you in  
7           fact passing notes between yourselves. I'm going to ask that.

8           MR. WEITZMAN: I think that the question as phrased is  
9           a bit too narrow, because it suggests that unless there is a  
10          discussion saying he's guilty or he's not guilty, that nothing  
11          else is deliberations and I don't think that's correct. I  
12          think for instance, arguments can be persuasive, contrary to  
13          the evidence, and so on, and that constitutes is deliberations.  
14          I think that's a bit too narrow a formulation.

15          MR. MONTELEONI: It's from the Second Circuit.

16          MR. WEITZMAN: I haven't read that case. But I think  
17          the open-ended question would be did anything in your  
18          discussions, are they deliberations, are you discussing the  
19          case, the facts of the case.

20          MR. MONTELEONI: Again, I think just a lot of  
21          discussions might be about the case, right. So saying is there  
22          a discussion of the case is going to be much more open-ended  
23          than something that actually falls within the does this involve  
24          a discussion about the defendant's guilt or innocence.

25          THE COURT: Were you discussing the evidence in this



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1 case.

2 MR. WEITZMAN: I think that's fair. The way I see it  
3 is it could be a multistage. If it is just personal, that  
4 question is going to get to no, we were only discussing  
5 personal matters. If they were discussing the facts of the  
6 case, I suspect you'll have to have a deeper inquiry, your  
7 Honor.

8 MR. MONTELEONI: I think the inquiry that the Second  
9 Circuit's cases suggest is first establish whether there even  
10 was any showing of passing of notes.

11 THE COURT: That's done.

12 MR. MONTELEONI: You can just ask was that about the  
13 guilt or innocence of a defendant.

14 I think that something more about this, you know, all  
15 kinds of things that happen in front of a jury have to do with  
16 the evidence. Like how long this evidence is taking to come  
17 in, any of these types of things. Just saying does this have  
18 to do with the evidence, bringing any sort of legalistic was it  
19 about the substance of the evidence or I just -- that's far  
20 from the actual inquiry, which is does it involve a discussion  
21 of the guilt or innocence of a defendant. And that's what the  
22 cases say, and we think if you even wished to make this  
23 inquiry, which is within your discretion, we think that's a  
24 more appropriate inquiry to take.

25 THE COURT: Stay here. Let me just formulate

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1 something.

2 (Pause)

3 THE COURT: I think first I don't think I should  
4 micromanage it without hearing what the answers are, but it  
5 seems to me I can say it's come to my attention that notes may  
6 have been passed between you and another juror -- I'll question  
7 each one separately, by the way -- during the summations of the  
8 lawyers. Did your note involve your views on the evidence or  
9 the guilt or innocence of any of the defendants?

10 And depending upon the answer, I'll just have to see  
11 where it goes. But I think I'll conclude with are you able --  
12 if I'm comfortable with the answers, are you able to be fair  
13 and impartial and decide this case is solely on the evidence or  
14 lack of evidence.

15 Agreed all around?

16 MR. WEITZMAN: Agreed.

17 MR. MONTELEONI: One or two things. Our view is that  
18 extra level of inquiry is not required, though it is obviously  
19 in your discretion. But I assume you are going to ask a  
20 predicate question of whether there actually was any passing of  
21 notes. I think it was did your note involve. And so I think  
22 the first question is there may have been a note, did you in  
23 fact pass a note.

24 THE COURT: What I was proposing was it's come to my  
25 attention that notes may have been passed between you and

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1 another juror during summations. I think I can say in fact did  
2 that happen.

3 MR. WEITZMAN: Yes.

4 I guess the only question is whether there should be  
5 some sort of instruction that they should not discuss the  
6 colloquy with others.

7 THE COURT: I think that's fair. Yes. Thank you.  
8 Okay. I'm going to go into the robing room.

9 Ms. Blakely.

10 (Juror No. 8 present in the robing room)

11 THE COURT: Come right over. It's come to my  
12 attention that notes may have been passed between you and  
13 another juror during the course of summations. I don't know if  
14 that's true or not. But tell me.

15 JUROR NO. 8: No. No.

16 THE COURT: You didn't exchange a note with anyone?

17 JUROR NO. 8: No.

18 THE COURT: Thank you. That's it. I appreciate it.  
19 Please, there is no need to discuss, I'd rather you not discuss  
20 the fact that I've been asking you this with the other jurors.

21 JUROR NO. 8: Okay.

22 THE COURT: And I'm going to ask another juror the  
23 same question. So, thank you very much.

24 JUROR NO. 8: All right.

25 (Juror not present)

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(Juror No. 9 present)

THE COURT: Doctor, it's come to my attention that notes may have been passed between you and another juror during the course of summations, or you or the other juror were showing your notes to each other.

Did that happen?

JUROR NO. 9: Did I show -- honestly I don't remember, and if I did say something, it wasn't anything about the case.

THE COURT: That's really, that's what I'm asking.

JUROR NO. 9: So, so the short answer is I honestly don't remember. But, if I did, again, it's not anything about the case.

I have looked once or twice, they put up an exhibit number and then it came down. And I tried to understand what was the exhibit, like GX 10 whatever. So one time I looked over and "did you get that?" and she didn't. So she had crossed it out because she tried to get it.

So, the only time I can remember looking for something is if I tried to write it down. Because you know they're talking very fast.

THE COURT: Of course. You know the number of times I've told everybody to slow down.

JUROR NO. 9: Yeah.

THE COURT: I don't want to put words in your mouth. But if I understand you. You may have looked to see another

O7B3MEN4

1 person -- another juror's notes, but it was for the purpose of  
2 getting an exhibit number.

3 JUROR NO. 9: Today, for instance, I looked, I looked  
4 at her paper, and I asked her "Did you get that GX number?"

5 THE COURT: And the answer?

6 JUROR NO. 9: She didn't because she had crossed it  
7 out. She started to write GX and she missed the string of  
8 numbers.

9 THE COURT: That's all you saw on her notepad.

10 JUROR NO. 9: Yeah, yeah. My notes are extremely  
11 detailed. I don't need anybody's notes. I have five books  
12 full of them.

13 THE COURT: Thank you, sir. I appreciate it.

14 JUROR NO. 9: Nothing, I promise nothing improper.

15 THE COURT: Thank you. Please don't discuss the fact  
16 that I had this inquiry with the others.

17 JUROR NO. 9: Sure thing.

18 THE COURT: And I really appreciate, and I'll tell the  
19 jurors this later on, I really appreciate all the time the  
20 jurors have spent. This is a very long case and I know  
21 everybody's taking it very seriously. Thank you, sir.

22 JUROR NO. 9: Just to add, that's exactly why I did  
23 get that number, because we're trying to absorb every piece of  
24 information. We're not suggesting anything --

25 THE COURT: Thank you.

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1 (Juror not present)

2 (At the sidebar)

3 THE COURT: I'm quite comfortable that there has been  
4 no misconduct, and there is no need for further inquiry. And  
5 you'll be able to read the conference in the robing room  
6 because it's on the record.

7 I asked Juror No. 8 that it's come to my attention  
8 that notes may have been passed between you and another juror  
9 during summation. And is that in fact what happened. She said  
10 no. No. She just said no. Period. I thanked her, asked her  
11 not to discuss the fact I was questioning her, and excused her.

12 When Juror No. 9 came in, I expanded the question  
13 because I thought it should be expanded, and I said it's come  
14 to my attention that notes may have been passed between you and  
15 another juror or you may have been looking at another juror's  
16 notes. And to that he said -- I have every reason to believe  
17 he's being completely truthful -- that I didn't pass any notes  
18 at all. But today during summations, he said the lawyers talk  
19 very fast, and I don't get all the exhibit numbers. And you  
20 may have seen that this juror has a stack of notepads that he's  
21 been filling up. Every time he fills one up, he asks my deputy  
22 for another pad. He said I take very thorough notes, and I did  
23 say to her "did you get that?" And I saw that on her notes  
24 that had been crossed out, the exhibit number.

25 And that was it. I don't think any further inquiry is

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Rebuttal - Mr. Richenthal

1 needed, I'm quite comfortable. Government?

2 MR. MONTELEONI: Yes, your Honor. We agree with that.  
3 But I would also just ask that the record reflect that counsel  
4 for Mr. Hana and Mr. Daibes, they didn't verbally object in any  
5 way to not also not being present for the inquiry. And I  
6 talked to them off the record and they confirm they agreed.

7 MR. LUSTBERG: That's correct.

8 MR. DE CASTRO: That's correct.

9 THE COURT: I saw everybody nodding affirmatively.  
10 That's a more lawyerly approach to it.

11 Government has agreed.

12 No further inquiry?

13 MR. WEITZMAN: We agree as well.

14 MR. LUSTBERG: Same.

15 MR. DE CASTRO: Agreed.

16 THE COURT: How long is Mr. Richenthal?

17 MR. MONTELEONI: I'm not an oracle.

18 (In open court)

19 THE COURT: Bring the jury in.

20 (Jury present)

21 THE COURT: You may be seated in the courtroom. And  
22 Mr. Richenthal, you may continue and conclude the rebuttal  
23 summation on behalf of the government.

24 MR. RICHENTHAL: Welcome back.

25 Now, before the break, I was talking a bit about how

O7B3MEN4

Rebuttal - Mr. Richenthal

1 Mr. Menendez's summation, Mr. Fee asked you to believe certain  
2 parts of Jose Uribe's testimony, but not other parts. Parts  
3 that were good for Mr. Menendez, believe those. But parts that  
4 paint a different story, that's exaggeration. That's  
5 invention.

6 Now, Mr. Lustberg did much the same thing but in his  
7 own way. I want to talk briefly about that. He told you that  
8 when Uribe said Hana was in his office studying for the future  
9 halal company, that was the truth. He was studying hard,  
10 Mr. Lustberg said.

11 (Continued on next page)

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O7bWmen5

Rebuttal - Mr. Richenthal

1 MR. RICHENTHAL: He told you when Uribe said that he  
2 was frustrated with Hana, that Hana wasn't doing enough, that  
3 was also the truth. However, when Uribe said Bienvenido  
4 Hernandez and Elvis Parra paid Hana \$150,000 in cash for part  
5 1, and part 2 -- that's kill and stop all investigation -- now  
6 Uribe's lying. That -- that -- did not happen. Now, I expect  
7 you're going to hear, you can embrace all the witnesses'  
8 testimony or none of it. It's up to you. But Uribe, again, is  
9 not mentally ill. He's not a mastermind. And embracing some  
10 of what he says and not the rest doesn't make a lot of sense.

11 Now, why did Mr. Lustberg do that too? Because the  
12 parts that he's asking you not to believe are devastating  
13 evidence of Wael Hana's guilt.

14 Could we go to the next slide.

15 You see, in the upper left here, it says, in sum,  
16 after Mr. Critchley has filed his notice of appearance, Will's  
17 out. Now, that last line -- that last line -- is the key.  
18 What Mr. Lustberg is arguing is that Will Hana was not involved  
19 once the Anton piece fell apart. Now, that matters for the  
20 reasons I explained before lunch. Right? Because the Anton  
21 piece isn't a crime. So Will is involved in the Anton piece,  
22 but he's not involved in the Menendez piece, or at least as to  
23 this part of the scheme, the argument goes, Will Hana's not  
24 there.

25 Ladies and gentlemen, look at the bottom part of your

O7bWmen5

Rebuttal - Mr. Richenthal

1 screen. And this is just a piece of the evidence. This is not  
2 all of it. Every single message on your screen -- and again,  
3 this is just a snippet. Every single message on your screen is  
4 in 2019, and look what they're about. Look at No. 366, for  
5 example. Will, directly to Nadine, this matter involves only  
6 four counts, etc. What's that about? It's the Parra case.  
7 Why is he texting Nadine information if he was out of the whole  
8 thing the year before? Why is he texting Nadine information at  
9 all if his only role was to hire a lawyer, Doug Anton? The  
10 answer, of course, is he wasn't done. He, Will Hana, was not  
11 done in 2018. His role was not limited to trying to hire Mr.  
12 Anton, and he was part of the scheme with Nadine. It's clear  
13 as day.

14 And by the way, not just 366. I'm not going to  
15 belabor this. Look at 368. It keeps going and going, because  
16 the scheme kept going and going, and Will Hana was part of it.  
17 He wanted Menendez to intervene on the Parra case, just like  
18 José Uribe, and he collected cash for it, because wanting  
19 Menendez to intervene, that's not going to work. Paying for  
20 Menendez to intervene, well, that will work.

21 Now that I'm talking a little about Hana, I want to  
22 respond briefly to the argument Mr. Lustberg made that even if  
23 Will Hana paid money, they were gifts, not bribes. I've  
24 already talked about that with respect to Mr. De Castro. That  
25 argument falls apart for much of the same reason. But I want

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Rebuttal - Mr. Richenthal

1 to start with just, like, a basic point.

2 If Hana wanted to give Menendez, or for that matter  
3 Nadine, gifts, why didn't he just give them gifts? I don't  
4 mean that as, like, a silly question. Because you know in this  
5 case he didn't just give them gifts. Right? There's unsigned  
6 contracts. There's unsigned promissory notes. Why not just  
7 give them a gift? If literally -- literally -- what you want  
8 to do is give them a gift, just give them a gift. You don't  
9 need an unsigned loan agreement. You don't need an unsigned  
10 consulting agreement. Why cover it up? Just: Hi, I like you.  
11 Here's a gift. Merry Christmas, merry Easter, whatever.

12 You don't need a sham mortgage note. You don't need a  
13 sham job. Just give a gift. The reason you do a sham job or  
14 you do a sham mortgage note is because they ain't gifts, and  
15 you want to have a cover story if the payments get found out.  
16 It's literally not worth your time otherwise. Why bother?

17 And let's just be very, very clear. The mortgage note  
18 was a sham. Don't conclude that because I say it. That's just  
19 a word. Look at it. No interest payments. Have you ever  
20 heard of a loan with no interest? None. No interest. No  
21 interest.

22 Oh, and, by the way, Nadine may have never made any  
23 payments at all. Have you ever heard of a loan with no  
24 interest and no payments? It ain't a loan. It's just money  
25 and the word "loan."

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Rebuttal - Mr. Richenthal

1           Could we go to the next slide.

2           You guys probably remember this. I'm not a math  
3 person. I'm not going to belabor this, but just look at it for  
4 one second. OK? So this is the ledger, essentially, of  
5 payments. Two things about this:

6           Now, remember, this is what Nadine told Daibes she was  
7 owed by Hana. Remember? And Daibes helped. Now, look at  
8 where it starts: May, not August, like the alleged note and  
9 contract say. Right? May. But what happened in May? Just to  
10 be clear, this is May 2019.

11           What happened in May? In fact, what happened on May  
12 1, the date that's highlighted? That's the IS EG Halal  
13 monopoly's beginning. And she's expecting \$10,000 a month.  
14 Now, she counted the first of those \$10,000 bribe checks.  
15 Right? The one that was handed to Menendez, and she counted  
16 the mortgage payments against it too. \$10,000 a month, just  
17 like Hana told the Egyptians.

18           Now, look at something else. This ledger only goes to  
19 October. Right? Even though you know that Nadine was  
20 supposedly fired in November. And she got a check. In fact,  
21 after she's supposedly fired, in November. So what's going on  
22 here? You see, ladies and gentlemen, she expected to continue  
23 to get paid.

24           Let's go to the next slide.

25           Look at that. This is Nadine to Daibes: Hoping not

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Rebuttal - Mr. Richenthal

1 to involve you, hoping we'd start November 1 and do it  
2 automatically.

3 What's "it"? Payment. This is November she's talking  
4 about. Of course, she's allegedly fired in October. The  
5 contract itself allegedly doesn't go past then anyway. Why, in  
6 heaven's name, is she telling Fred Daibes this? Because it  
7 ain't a contract. It's not signed anyway. It ain't a job. It  
8 ain't a loan. Daibes knows it, and she wants her money.

9 Now, to be clear, November ends up being the last  
10 check she gets. You guys know that from the trial. Well, what  
11 happened in November? Not just Thanksgiving. What happened in  
12 November?

13 Go to the next slide.

14 That -- that; there was a search of Wael Hana's home  
15 on November 25, 2019. Disruption in the plan. No more checks.  
16 But it's not because she was fired. Remember, of course, she  
17 also got a check after she was fired. And this is tied to the  
18 argument that somehow Wael Hana was not involved in 2018. But  
19 does that mean there's no more payments? No more payments from  
20 Wael Hana or IS EG Halal, his company, to Nadine? No.

21 Go to the next slide.

22 These are envelopes. Right? They're found in the  
23 Menendez home. There are three of them that are in red. Whose  
24 prints are on them? Nader Moussa, Agent Kougemitros and, the  
25 bottom one, Gazmend Lita. Now, who are those people? You

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Rebuttal - Mr. Richenthal

1 might remember the answer. They're connected to Wael Hana.

2 Go to the next slide.

3 They work for him. So how did Nadine get paid by Wael  
4 Hana after the checks stopped? The good old-fashioned way --  
5 cash.

6 By the way, the chart I just showed you is GX-1334,  
7 and you'll see from other evidence in the case that one of  
8 those envelopes is also unquestionably after the checks, in  
9 recent years, and during the scheme. Because that's when the  
10 money was withdrawn. It's not that Mr. Hana left the  
11 conspiracy. It's that the conspiracy continued, and he just  
12 needed to be a lot more careful. So he switched to cash and he  
13 switched to his employees, and it's sitting in the home like  
14 the rest of the bribes.

15 Now, two more things, quickly.

16 First, Daibes's response to that ledger is not, what  
17 the heck are you talking about? It's not, why should I pay?  
18 It's not, May? Don't you have a contract through fall? It's,  
19 like, no problem, I'll pay. And he helps, because he knows  
20 what's going on. That is a really, really strange ledger,  
21 right? If you don't know what's happening, it's confusing.  
22 You guys know what's happening. You might still think it's  
23 confusing. Daibes doesn't ask a question other than, how much  
24 does Will owe you? Just the amount of money. Remember, he's  
25 Menendez's good friend. Do you think he thinks that Nadine has

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Rebuttal - Mr. Richenthal

1 become Strategic International Business Consultants, the name  
2 of her company? Of course not. It's just money. Because  
3 Daibes is part of the scheme too.

4 By the way, I should also note that even -- even -- if  
5 you think that the promissory note is real, it can still be a  
6 bribe; that is, bribes don't have to be something other than a  
7 loan. You can give a bribe as a loan, especially a no-interest  
8 loan. But this wasn't a loan. And neither was it a job.

9 Now, I'm not going to go at length on this, but first  
10 of all, she gets \$10,000 after she's fired. Second of all,  
11 she's fired in an email that literally thanks her for her work  
12 and just says we don't need someone to head the New Delhi  
13 office. Now, Nadine didn't live in India. OK? She wasn't  
14 going to be the head of the New Delhi office, and the work she  
15 did for \$10,000, heck, for \$30,000 -- you saw it -- was it  
16 worth \$30,000? Was it worth \$10,000? Of course not. And who  
17 works in an unsigned agreement anyway? And then when the  
18 agreement terminates allegedly just keeps getting paid, just  
19 switches to cash by the employees of the man who fired you.  
20 It's not a job. It's a way to cover up bribery.

21 Now, I want to talk a little bit more about Wael Hana,  
22 but first, I want to make a basic point. I've been talking  
23 about cash. I've been talking about checks. But even if that  
24 didn't exist, Hana's guilty anyway. Right? Because you know  
25 he helped with the Mercedes. You know he's part of the scheme

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Rebuttal - Mr. Richenthal

1 to pay other ways. So you could actually assume that the  
2 promissory note is real. And it's not. You could assume that  
3 the employment contract is real. It's not. It wouldn't  
4 matter, but those things aren't real.

5 So let's talk a little more about Wael Hana.

6 Mr. Lustberg's final argument -- it might not have  
7 been literally, but the last thing he said, one of the things  
8 he said was, ladies and gentlemen, this can't be bribery  
9 because the actual payments are in 2019. But Menendez is doing  
10 things in 2018. So no bribery. Right? Menendez acts in 2018.  
11 Wael Hana pays in 2019. So you can't do that. Well, I don't  
12 expect you'll hear from Judge Stein that literally a bribe must  
13 be paid before the action gets taken. I expect you're going to  
14 hear an offer of a bribe is just as good as a bribe. In fact,  
15 you don't need to pay at all.

16 So what happened in 2018? You know the answer. He  
17 promised Nadine he'd pay. That's the project she got clearance  
18 on. And Menendez sprang into action. And when Wael Hana got  
19 his monopoly, he, in fact, paid. That's not a lack of bribery.  
20 That is literally bribery.

21 Now, I want to be very clear about something. Yes --  
22 I think Mr. Lustberg suggested this -- Mr. Hana didn't pay with  
23 enthusiasm. I think you saw some text messages suggesting he'd  
24 rather not pay. Well, yeah. He got his monopoly. He got all  
25 the stuff in 2018 and the spring of 2019. If he already got



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Rebuttal - Mr. Richenthal

1 it, why pay? This is not legitimate business, I'm not going to  
2 pay. Now, to be clear, he, in fact, paid. But the fact that  
3 he didn't really want to doesn't make him innocent. In fact,  
4 it's the opposite. You can only try to stiff someone you  
5 actually otherwise made a promise to. It reinforces that the  
6 promise in 2018 was an actual promise. Nadine thought so.  
7 Wael Hana thought so. And it reinforces because this is all  
8 fake, and he thinks he can try to get out of it because the  
9 contracts aren't real. The job isn't real. The promissory  
10 note isn't real. So if you can get away with it, don't pay.  
11 Again, he did pay. But don't be deceived by the argument  
12 because he didn't want to they weren't bribes. He's a  
13 businessman. Of course he didn't want to.

14 So let's go back. Let's go back to the monopoly.  
15 When did Robert Menendez call Ted McKinney? Two days after  
16 Morton's dinner. Two days. Two days after, what else can the  
17 love of my life do for you, said to Wael Hana and two Egyptian  
18 officials. Two days.

19 By the way, why is Wael Hana even there? Now,  
20 Mr. Lustberg argued that, you know, Will Hana is just trying to  
21 advocate for his country. That's why he's there.

22 By the way, I think I said two Egyptian officials at  
23 dinner. I think it was actually one.

24 So, the argument is Wael Hana is just advocating for  
25 Egypt. Remember this argument? Let's talk a little about

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Rebuttal - Mr. Richenthal

1 that. First, you can definitely advocate for a country if you  
2 want, but you can't bribe someone for it. And he did. So,  
3 like, you can just dispose of that argument right there. He  
4 may have thought that Egypt deserved everything in the world,  
5 but if you bribe a U.S. senator for that, he's guilty. But --  
6 but -- is what he did advocacy? Was the U.S. embassy  
7 information advocacy? Where is the advocacy? He's just sent  
8 them information, to the Egyptian officials, to do with as they  
9 will. He doesn't advocate for a damn thing.

10 Now, that's actually true for virtually everything  
11 else as well. Remember the Jamal Khashoggi heads-up for giving  
12 the Egyptians a leg up in conversations with the senators?  
13 Advocacy? It's cheating, sure. But advocacy?

14 How about the ghostwritten letter? So Mr. Lustberg  
15 literally said that was the work of a diplomat. Are you  
16 kidding me? A senator -- a senator -- secretly edits a letter  
17 to convince other senators to drop objections to military aid  
18 to a country. Doesn't tell anyone he's doing it, and he sends  
19 it through his girlfriend. And Wael Hana's part of this  
20 scheme. Does that look like advocacy to you? Wael Hana could  
21 have had a meeting with Senator Menendez. Senator Menendez had  
22 meetings with all kinds of people. You heard about a guy named  
23 Tasos, Cyprus and Greece. Tasos has a foundation.

24 You can meet about foreign countries, sure. A  
25 ghostwritten letter secretly, through your girlfriend, to

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Rebuttal - Mr. Richenthal

1 convince a foreign country to drop objections by senators, does  
2 that seem like such an aboveboard lobbying advocacy activity?  
3 And by the way, the woman in the middle that I'm talking about,  
4 Nadine, you're secretly promising to pay her from the monopoly  
5 you're hoping to get from the same foreign country, does that  
6 sound like advocacy? It sounds like bribery.

7 And let's be very, very crystal clear about something.  
8 Senator Menendez has every right and every ability to seek to  
9 convince his fellow senators of literally anything he wants.  
10 But if he wants to do that, he could walk down the hallway. He  
11 could pick up the phone. He didn't do that. He ghost-wrote a  
12 letter secretly with his girlfriend who's been promised  
13 payments by Will Hana. That's not the work of a diplomat. You  
14 heard nothing like that in this case. But even if you heard  
15 nothing in this case, you would already know that that's not  
16 the work of a diplomat. That's the work of a corrupt official.

17 And Hana knew it, because, again, if Menendez and Hana  
18 just wanted to talk about Egypt, they could talk about Egypt.  
19 Why is Nadine in the middle? It's the same reason she's in the  
20 middle of the embassy information. Senator Menendez and Wael  
21 Hana needed to separate themselves from each other because  
22 what's going on is dirty, and they both know it. Nadine knows  
23 it too, but at least if she's in the center, there are fewer  
24 communications; it's harder to figure it out. You can call it  
25 diplomacy. You can deny it.

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Rebuttal - Mr. Richenthal

1 A ghostwritten letter isn't advocacy. It's special  
2 treatment, and if you have any doubt -- and you shouldn't --  
3 that Menendez and Nadine didn't think of Will as some sort of  
4 mere advocate or go-between. Look at how they talked not to  
5 him.

6 Could we put up GX-A101-83. The top. Nadine Menendez  
7 to Bob Menendez, April 1, 2019: Will left for Egypt yesterday  
8 supposedly and now he thinks he's king of the world and has  
9 both countries wrapped around his pinky.

10 That's weird enough, but keep reading: I really hope  
11 they replace him.

12 Who is the "they"? Egypt. Replace him as in  
13 substitute out. If Will Hana is just like a guy who likes  
14 Egypt, how does the foreign government of Egypt get to replace  
15 Will Hana in the United States? They don't. It's because he's  
16 working for Egypt, and Nadine and Menendez know it. Menendez  
17 does not say back, who's they? I'm sorry. Will Hana lives in  
18 New Jersey. How do they replace him? No. This is, like, a  
19 normal thing to say because Will Hana is their intermediary to  
20 the government of Egypt, and they know it.

21 And as I said a few minutes ago, why else is Will  
22 Hana, the failed trucker, future halal exporter, at Morton's  
23 dinner with the senator and the Egyptian official in the first  
24 place? There are lots and lots -- you heard this -- of  
25 constituents of Senator Menendez from Egypt or connected to

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Rebuttal - Mr. Richenthal

1 Egypt in New Jersey. Lots. That's great. Who is at the  
2 dinner? The guy that promised his girlfriend money. The guy  
3 who otherwise has no reason to be at the dinner, except he  
4 promised his girlfriend money.

5 And again, I've been talking. I've been talking about  
6 what Nadine and Menendez thought of Will. What did Will think  
7 of Menendez? Was he part of this, or was he -- I don't know --  
8 just sort of an unwitting participant? Well, how did he refer  
9 to Menendez? You guys know the answer -- our man. Our man is  
10 going to India. He says that to an Egyptian official. That's  
11 at Government Exhibit 1302, line 79. I think Mr. Monteleoni  
12 showed you this. Our man. He's talking to an Egyptian  
13 official, and he's saying our man. So who is "our"? Egypt's.  
14 Who is "man"? Menendez. Does Will Hana think of himself as a  
15 mere advocate, or does he think he's got Menendez in his  
16 pocket?

17 He thinks he has Menendez in his pocket. Is he wrong?  
18 No. Literally look at all of the stuff Menendez did secretly  
19 with Will and Nadine. He was their man. It is a horrible  
20 thing to say. This is a senior U.S. senator, and he was their  
21 man.

22 Of course, it wasn't just Will Hana who thought that.  
23 The head of Egyptian intelligence thought that. General Abbas  
24 Kamel thought that.

25 Could we call up Government Exhibit 8F33 on one side

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Rebuttal - Mr. Richenthal

1 of the screen and Defense Exhibit 1009 on the other.

2 You saw these. Senator Cardin -- these are otherwise  
3 identical letters. If you didn't read them, you probably think  
4 they're the same thing. You should read them. Senator Cardin  
5 is thanked in very formal terms for a meeting. This is the  
6 same meeting Menendez was in, right? So we're not talking  
7 about a different one. But Senator Menendez is Bob, and he's  
8 called a sincere friend. These are otherwise essentially form  
9 letters, but the one on the left isn't a form letter. It's not  
10 even a formal letter. That's the head of Egyptian  
11 intelligence. Was this an accident? Was Will wrong? No.  
12 Because Will's not guessing. Will's talking to an Egyptian  
13 official and calling him our man because he was their man.

14 General Abbas Kamel is referring to him as Bob because  
15 this isn't a normal relationship. Senator Cardin is Senator  
16 Cardin. Bob is his sincere friend. If you had any doubt about  
17 that -- and you shouldn't -- look at Menendez's response when  
18 his own staffer -- you remember Sarah Arkin, right? She did  
19 the right thing. She did things by the book, and Mai  
20 Abdelmaguid complains about it.

21 By the way, note what she says. It's not just I'm  
22 going to lose my job. Look what she says in the fourth line,  
23 my director, as in director of Egyptian intelligence.

24 Now, Nadine complains to Menendez about this. He  
25 doesn't seem remotely confused. Quite the opposite. He just

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Rebuttal - Mr. Richenthal

1 says taken care of. So what did that mean? I've got Mai's  
2 back. Sarah Arkin, my staffer for years, don't worry about it.  
3 You know what he did. He lied to her. He kept her away from  
4 the CODEL, because it was more important to him to keep Mai  
5 happy than his own professional staffer happy.

6 It's been a two-month trial, but if you remember  
7 nothing else about Menendez's relationship with Egypt, remember  
8 what's in the middle of your screen. He chose someone who he  
9 understood was an Egyptian intelligence officer over a  
10 professional staffer of the United States Senate Foreign  
11 Relations Committee, who had devoted years to him in service to  
12 the United States. You could use many words to describe that.  
13 What the law describes it as is serving as a foreign agent.

14 Now, I'm going to make a few other, small arguments  
15 and then I'm going to wrap up, because I've been talking for a  
16 long time.

17 On this same point -- by same point I mean Wael Hana  
18 paying Robert Menendez -- Mr. Lustberg made the following  
19 argument. He argued whatever else you think, this can't have  
20 been corrupt because it wasn't enough money. Remember he said,  
21 like, Nadine only gets tens of thousands and it's a big deal to  
22 Egypt so it can't be true.

23 Well, first of all, I don't expect you're going to  
24 hear that the law excludes bribes if the briber should have  
25 asked for more. I don't expect you're going to hear anything

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Rebuttal - Mr. Richenthal

1 like that. Your common sense would tell you the contrary. But  
2 it also doesn't make any sense factually because, yes, Nadine  
3 Menendez only got some money in 2019, but it was a lot of  
4 money. In fact, it's the mortgage payments. It's the fake  
5 job. It's the Mercedes. It's cash I showed you that  
6 Mr. Lustberg didn't talk about. It's gold. Hana gave gold  
7 too, you know that. So it's actually a lot. But there's a  
8 more fundamental problem with this argument. None of the  
9 scheme gets disrupted. There's a search of Menendez's home.  
10 You can damn well infer that if it kept going, Robert Menendez  
11 expected to get more. Why would he not? Hana is raking in  
12 money. So if you stop it and only a certain amount was paid,  
13 does that somehow demonstrate it wasn't bribery? No. Of  
14 course it doesn't.

15 And again, I don't expect you're going to have to  
16 decide whether the bribe was big enough, because it literally  
17 makes no sense why Robert Menendez does this unless he's  
18 getting paid. There is no other explanation. This is a man  
19 who was known for years -- for years -- for his human rights  
20 record. Why does he do it? There's literally only one answer  
21 to that question. It's money.

22 Now, from Egypt to Qatar. I'm not going to talk too  
23 long about Qatar. And one reason I'm not is I just want to  
24 note you can find every defendant guilty of every count even if  
25 you literally never talk about Qatar. Period. There are no



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Rebuttal - Mr. Richenthal

1 counts that rest alone on Qatar. None. Zero. It's part of  
2 the counts, but there's no count that rests solely on it. It's  
3 important you remember that. But you shouldn't forget about  
4 Qatar, because it just reinforces everything you've learned for  
5 two months.

6 Now, Mr. Fee showed you a bunch of stuff about Qatar.  
7 I think there was a tweet in there, a whole bunch of press  
8 releases. The idea was, well, everyone just loves Qatar.  
9 Everyone said nice things about Qatar, so if Menendez said nice  
10 things about Qatar, he's just one of lots of people. How many  
11 of them had gold in their home from someone trying to do  
12 business with Qatar, Fred Daibes's company. How many of them  
13 had bundles of cash in their home from someone trying to do  
14 business with a Qatari-tied company?

15 Now, let's be clear. There's nothing wrong with  
16 thanking Qatar. This case is not about Qatar. But the  
17 question is are you acting because you actually think they  
18 deserve thanks, or are you acting because you like the  
19 envelopes of cash in your home and your friend is trying to do  
20 business with a company called Heritage which has people  
21 connected to Qatar? Don't take your eye off the ball here.  
22 They also tried to suggest, well, there's, like, investment  
23 people and lawyers, and they're all involved in the deal. OK.  
24 Ladies and gentlemen, the allegation is not, like, the deal was  
25 corrupt. The allegation is that Menendez took things from Fred

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Rebuttal - Mr. Richenthal

1 Daibes, knowing Fred Daibes wanted Menendez to do things for  
2 Qatar, because that would get Fred Daibes closer to the Qatari  
3 officials and closer to the deal. The deal is fine. What led  
4 to the deal? Why did Bob Menendez take things from Fred Daibes  
5 and do very strange things for Qatar? Because he was on the  
6 take.

7 Now, you may be thinking, well, what strange things?  
8 Remember the press release he put out? Sarah Arkin testified  
9 about this. They were planning to put a press release out  
10 thanking a whole bunch of countries. Qatar is one of them, and  
11 then, like a switch, within ten minutes of a communication from  
12 Daibes, Menendez says let's thank Qatar. The problem, as you  
13 know, is not that thanking Qatar is wrong. It's why did he do  
14 it? Why, within ten minutes? Do you have any doubt as to why?  
15 Of course you don't.

16 Now, what else did Daibes suggest Menendez should do?  
17 Pass a bill. Remember the resolution. He kept updating him on  
18 the resolution. Now, Fred Daibes is a real estate developer.  
19 He's not a lawyer. He doesn't work for Menendez. There's no  
20 evidence that his job was to, like, update Menendez on  
21 resolutions in the Senate. So why is he, like, constantly  
22 updating him on a particular resolution? And why -- that's  
23 weird enough, by the way, but why is he doing it after offering  
24 a Patek Phillipe watch? It's because those things are linked.  
25 Fred Daibes didn't fall in love with Qatar or decide he wanted

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Rebuttal - Mr. Richenthal

1 to be a Menendez staffer unpaid. It's because Menendez liked  
2 Patek Phillipe watches. You saw the searches. So he suggests  
3 I'll get you a watch. And by the way, here's the resolution.  
4 Do you have any doubt those things are linked?

5 Now, to be clear, it does not matter -- it does not  
6 matter -- if Menendez did a damn thing on the resolution. It  
7 does matter. Why? Because when he took money from Daibes he  
8 knew Daibes wanted him to. And I expect you're going to hear  
9 that it's just as much of a crime to accept money or a thing of  
10 value in exchange for action as it is to actually take the  
11 action in return for a bribe. It's a really good reason. And  
12 you can go back to the timeline that Mr. Monteleoni put  
13 together about all the back-and-forth with Qatar, Daibes and  
14 Menendez. None of it makes any damn sense unless Menendez is  
15 acting for money.

16 A couple other small things.

17 Continuing with Daibes for a moment, Mr. De Castro  
18 argued that, well, Daibes didn't have much to do with IS EG  
19 Halal, so he can't really be tied to that part of the scheme.  
20 Well, first of all, as a legal matter, again, you can be 1  
21 percent in. For conspiracy, the law says you're all in. But  
22 he wasn't 1 percent in. Daibes backed Hana. You know that.  
23 Daibes got millions of dollars from Hana. Hana was going to  
24 lose his home. Vasken Khorozian told you that. He can't spend  
25 millions of dollars if he's going to lose his home, millions of

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1 dollars on the monopoly. And Daibes gets it, one of Daibes's  
2 companies gets it. You saw the evidence of that.

3 Daibes gives office space to Wael Hana. Remember?  
4 That actually why I said the office is bizarre. Daibes lends  
5 two employees to Hana -- Jamela Maali and Rony Daibes. He's  
6 backing Hana. He's backing him financially. He's backing him  
7 with people. He wants him to succeed. But there's a problem.  
8 But there's a problem.

9 What's the problem? Hana has no business doing halal  
10 certification. That's not making fun of him, but he has no  
11 experience there. There are a whole bunch of companies that do  
12 it. He doesn't have any experience at all. Remember his own  
13 lawyer literally says what is halal? But Hana has something --  
14 connections to the government of Egypt. And Daibes and Hana  
15 have something together -- Robert Menendez. So they put them  
16 together. That's why, ladies and gentlemen, Fred Daibes is in  
17 multiple meetings with Wael Hana and Egyptian officials. Is he  
18 in every one? No.

19 Mr. De Castro is right. He's not in every one, but  
20 he's in multiple. What the heck is he doing there? Why?  
21 Because he's part of it. He wants Wael Hana to succeed. He  
22 wants Wael Hana to get his monopoly. He wants the monopoly to  
23 stay. You don't get millions of dollars if there's  
24 competition, so he's in some of the meetings and he helps with  
25 some of the payments.

O7bWmen5

Rebuttal - Mr. Richenthal

1 Now, I said some. That's enough. To be a  
2 conspirator, that is enough. To be part of a bribery scheme,  
3 that is enough. I do not expect you're going to hear from  
4 Judge Stein, even for a substantive count that is not a  
5 conspiracy count, everyone must have an equal role.  
6 Noncriminal life doesn't work that way. Neither does criminal  
7 life.

8 Let me also note, by the way, that Daibes is also  
9 guilty even if he had nothing to do with Egypt at all. You're  
10 going to see there are counts that ain't got nothing to do with  
11 Egypt. So at a minimum, Daibes is guilty of the U.S. Attorney  
12 scheme. We already talked about that, but you should not let  
13 him off the hook for the Egypt piece because maybe he got a few  
14 million dollars and not \$10 million. Or maybe he gave Hana two  
15 employees and not 20 employees. You're in or you're out.  
16 That's the whole point. You're in a bribery scheme or you're  
17 not in a bribery scheme. He was in a bribery scheme.

18 I want to make one more point about the same scheme;  
19 that's Egypt. I want to talk about obstruction of justice, and  
20 then I want to wrap it up.

21 All right. Egypt. Ted McKinney. Now, you've heard  
22 from multiple lawyers there's this technical thing called  
23 official action. This doesn't count because Ted McKinney does  
24 not work for Egypt. You're right. Ted McKinney does not work  
25 for Egypt. Does that mean we're done? No.

O7bWmen5

Rebuttal - Mr. Richenthal

1           Why not? Because Ted McKinney and Bret Tate are  
2           executing the foreign policy of the United States. One of the  
3           lawyers -- I think it was Mr. Fee, but forgive me; I can't  
4           remember who -- said something like Ted McKinney had, like, a  
5           personal view of monopolies, like he just -- I don't know -- he  
6           hated them. Maybe he did, but that's actually not the point  
7           here. Ted McKinney is the undersecretary of the United States  
8           Department of Agriculture, and he and Bret Tate are developing,  
9           formulating and executing the official foreign policy of the  
10          United States through the ambassador -- you heard the *chargé*  
11          *d'affaires*, right, the acting ambassador -- in the U.S. embassy  
12          in Egypt. It literally cannot be more serious and more  
13          official. That's what they're doing. That's what Menendez is  
14          trying to interfere with. He wants to change the official  
15          policy of the United States with respect to a partner, Egypt,  
16          and on an issue that affects numerous consumers and U.S.  
17          businesses, to a high-level official in the U.S. Department of  
18          the Agriculture. That's what he's trying to do. Damn right  
19          that's official action. Hard to see it as being more official  
20          than changing the fundamental foreign policy of the United  
21          States, ahead of the president of the United States, through  
22          our embassy in Cairo on an issue of importance with a major  
23          regional partner and U.S. businesses. It's not just like a  
24          phone call to some guy that doesn't like monopolies. You know  
25          that's not what happened in this case.

O7bWmen5

Rebuttal - Mr. Richenthal

1 All right. Obstruction. So I haven't talked much  
2 about obstruction of justice. It's not because it didn't  
3 happen. It's because it's kind of related to everything else  
4 that happened; that is, Menendez's lies about the fake loans,  
5 his lies about the car. Those are part of the bribery scheme,  
6 and because they were directed to the grand jury, they're also  
7 obstruction. But just to pause for a second on one of the  
8 major arguments you heard about obstruction -- two arguments,  
9 actually.

10 So one was that Menendez's lawyer, his former lawyers,  
11 to be clear, they may have made misstatements, there's no  
12 evidence Menendez knew about it. That's the first argument,  
13 right? You guys heard about that. The second is, well, so the  
14 fake checks, the cover-up checks, the loan checks, they were  
15 actually produced by Nadine, so maybe she's guilty of  
16 obstruction but Menendez is not.

17 I'm going to take them in order. The first  
18 argument -- you saw that PowerPoint. It says presentation on  
19 behalf of Senator Menendez, who is himself a lawyer, and this  
20 is in September of 2023. This is more than a year after the  
21 search of his home by the FBI. Do you sincerely think his  
22 lawyers just, like, made a bunch of stuff up? They guessed?  
23 They just, like, showed up at the U.S. Attorney's Office? You  
24 literally heard the U.S. Attorney himself was in the room. And  
25 they showed up and they're like: Listen, man -- I don't

O7bWmen5

Rebuttal - Mr. Richenthal

1 know -- he didn't know about it.

2 Like, do you believe that? Of course you don't.  
3 Obviously they talked to Menendez first, because it aligns with  
4 his defense. This is what he wanted the government to believe,  
5 what he needed the government to believe. They're not, like,  
6 random misstatements. They're lies.

7 Now, to be clear, his lawyers didn't know they were  
8 lies. There's no evidence of that at all. There's no  
9 allegation his lawyers did anything wrong. They acted as  
10 lawyers are supposed to -- zealous advocates for their clients.  
11 But the lies came from the client, and the cover-up that  
12 they're talking about, the checks written by Menendez's wife,  
13 that wasn't just, like, occurring over here. And then  
14 Menendez's lawyers are way over here. It's a scheme, ladies  
15 and gentlemen. Menendez and his wife concocted it.

16 Remember the checks that funded the checks? You may  
17 be wondering what the heck am I talking about. The checks that  
18 pay back the fake loans -- OK -- the first part of that  
19 transaction comes from Robert Menendez to Nadine Menendez.  
20 Right? Because they're in this together. And she produces  
21 them to the grand jury, making it seem real. And he sends his  
22 lawyers in to the government's office and tells the same story.  
23 That is a scheme. That is an agreement. That is, I think, in  
24 the words I expect you're going to hear from the judge, an  
25 endeavor to obstruct justice.



O7bWmen5

Rebuttal - Mr. Richenthal

1 Now, does it matter that it failed? No. Because I  
2 expect you're going to hear from Judge Stein, an endeavor --  
3 that is, an attempt, a try -- is criminal. She produces fake  
4 checks to cover up the bribery scheme they're both in. He  
5 helps her do it by writing the checks, and he sends his lawyers  
6 in to make these statements.

7 Side note: Mr. Fee argued somehow it suggests  
8 innocence that the presentation did not deny that he knew about  
9 the consulting contract -- that is, the fake consulting  
10 contract with IS EG -- but it denied that he knew about the  
11 payments. Now, it might have some superficial appeal, but  
12 remember, ladies and gentlemen, what's going on here. He needs  
13 to distance himself from the money, which doesn't show up on  
14 his disclosure forms. He needs to distance himself from Wael  
15 Hana, the man paying his girlfriend and then wife. It is  
16 smarter, it is more clever if you're, like, oh, I knew she was  
17 a consultant, meaning she has a consulting company, and it's  
18 fake, but it exists. I knew about that, but I deny the  
19 payments. I deny where they're from. Because then you get to  
20 make a very clever argument.

21 Well, as he told Shannon Kopplin: My wife tries to be  
22 a consultant. She works out of her kitchen. I'm not really  
23 sure what she does.

24 But you don't have to say she got 30 grand from Wael  
25 Hana, who helped my girlfriend get a Mercedes and is secretly

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Rebuttal - Mr. Richenthal

1 giving information to Egypt. You don't have to say that. The  
2 fact that the statements were selective, that one of them was  
3 the truth and the others were false, is because he wanted it  
4 that way.

5 At the end of the day, ladies and gentlemen, Robert  
6 Menendez was not a victim of his lawyers, Wael Hana or Nadine  
7 Menendez. He was a victim of a desire for nicer stuff than his  
8 Senate salary could afford. He's not at the center of a  
9 bribery scheme without knowing it, never mind a bribery scheme  
10 that lasts five years. He's not at the center of a  
11 multi-faceted corrupt endeavor involving one of his friends,  
12 Fred Daibes, without knowing it, for years. If the defense is  
13 right and each of Robert Menendez, Wael Hana and Fred Daibes  
14 are not guilty, they're each the unluckiest man in the world.  
15 And together, they are the most unlucky three people the world  
16 has ever seen.

17 Now, let me explain what I mean. I'm not going to go  
18 through all the list of coincidences Mr. Monteleoni went  
19 through, but I'm going to tell the story, in part, based on  
20 facts that actually happened but with a twist. And the twist  
21 is none of it happened because of bribery and foreign agency.  
22 It happened, but it didn't happen because of money, it didn't  
23 happen because of gold and it didn't happen because of foreign  
24 agency.

25 Ready?

O7bWmen5

Rebuttal - Mr. Richenthal

1 Robert Menendez, 2018, at the request of Nadine  
2 Menendez -- then Nadine Arslanian, his girlfriend -- meets with  
3 Wael Hana and Egyptian officials. Now, she's there too, as I  
4 said, but in this alternative telling of the story, it's not  
5 because Hana's promising her money. Remember, there's no money  
6 in this part of the story; she's just there. And it's not that  
7 Hana's there because he's promised money, although there's no  
8 evidence he has any foreign policy experience of any kind or  
9 belongs in that room. It's not a knock on him, but that's not  
10 what he brings to the table. But they're all there.

11 And by the way, the meeting comes together through a  
12 handwritten invitation. It's utterly bizarre. His staff has  
13 never seen it before. They have no idea why. Remember, in  
14 this telling of the story, in this alternate reality, that just  
15 happened. That's just, like, a handwritten invitation.

16 Now, this is, like, a very serious matter, but how in  
17 heaven's name did that alone happen? Did the computers in the  
18 office break? I mean that's a joke, but, like, the stuff I'm  
19 telling you about actually happened in the world. They're not  
20 assumptions or inferences. These things actually occurred. So  
21 the question is why?

22 Now, the story doesn't stop there. Right? After the  
23 meeting -- this is 2018, the spring of 2018 -- things get even  
24 weirder. Menendez provides sensitive information to Egypt  
25 through his girlfriend then back to Hana. He promises to

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Rebuttal - Mr. Richenthal

1 approve a sale of tank ammunition, again, to Hana, the failed  
2 trucker, who hopes to export meat to Egypt, nothing to do with  
3 tank ammunition. But somehow he tells them. And he starts  
4 helping other senators secretly change their views on Egypt.  
5 He literally -- he literally -- tries to change the mind of his  
6 fellow senators, but secretly, not by walking down the hallway.  
7 And does his staff know he does this stuff? Nope. And he  
8 does it all through his girlfriend and through Hana, but  
9 certainly not because he's agreed to pay. Right?

10 In this version of the story, that doesn't exist. So  
11 in this version of the story, he's just doing it. Now,  
12 remember the Senate Ethics Manual literally says you can't be a  
13 foreign agent. Robert Menendez himself literally writes a  
14 letter to the attorney general of the United States in the  
15 following years saying you can't be a foreign agent. And he's  
16 totally being a foreign agent. But in this version of the  
17 story, he forgot?

18 Now, I already told you what else did he have to  
19 forget. I'm not making fun of it, but you have to answer  
20 questions as to why this stuff occurred in the world. So in  
21 this version of the story, he also apparently forgot Hana's  
22 phone number, Hana's email address, any ability to contact Wael  
23 Hana, except through this girlfriend, who Wael Hana's promising  
24 money to. But he has another problem, right?

25 So in this version of the story, he's just using his

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Rebuttal - Mr. Richenthal

1 girlfriend for literally no reason at all.

2 Now, the following year -- that was 2018 -- Wael Hana  
3 gets his monopoly. Nadine Menendez -- again, Nadine Arslanian  
4 at the time, his girlfriend -- says to Menendez: Halal went  
5 through, it's going to be a fantastic year all around. Now, in  
6 this version of reality, Menendez has no idea what that means,  
7 because remember, in this version of reality, Wael Hana is just  
8 a guy who knows Egyptian officials. He's not trying to get a  
9 monopoly he doesn't deserve, certainly not paying his bills.  
10 But Menendez doesn't ask a damn question. He doesn't say,  
11 halal went through; what the heck does that mean? Fantastic  
12 year all the around? Fantastic for whom? He doesn't ask.

13 And now Nadine starts to get paid -- for nothing,  
14 essentially. Now, again, in this alternate world, Menendez  
15 doesn't know that. But he's still doing stuff for Will. He's  
16 still doing stuff for Nadine. He's still doing stuff for  
17 Egypt. He goes along. What else can the love of my life do  
18 for you? It must be about the wine, as the defense told you.  
19 Two days later he calls Ted McKinney. In this version of the  
20 story, that's just a coincidence.

21 And it gets even weirder. Right? Over time he's  
22 doing more and more. Hana, the man who's promised to pay his  
23 girlfriend, now starts helping with her mortgage through a fake  
24 note. He starts helping get a Mercedes for his girlfriend that  
25 she cannot afford, and he knows it. But in this version of the

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Rebuttal - Mr. Richenthal

1 story, that's just happening. Nothing strange about it.

2 The story keeps going. Things get even weirder, so  
3 weird his own staff is told he's changing his position on  
4 Egypt. He starts having meetings with no readout, no staff  
5 involved. They're calling him Bob. They're calling him  
6 sincere friend. Things are changing, but in this version of  
7 reality, there's no reason for that, and certainly it's not  
8 because of all the money that's coming in.

9 And at the same time this is happening, he's also  
10 doing things for other people paying him. Right? It's not  
11 just Ted McKinney. It's Gurbir Grewal. It's Fred Daibes, the  
12 Sellinger piece of the story. Menendez is, time and again,  
13 acting for people that are paying him and his girlfriend. Time  
14 and again, he's lying about it. He's hiding it. None of it  
15 shows up on his forms. None of it makes any sense. He's  
16 literally lying to his friends, lying to Philip Sellinger about  
17 why he's dropping him. Drops him like a hot potato the second  
18 he learns he's recused. All of this is happening -- gold,  
19 cash, heck, the elliptical machine.

20 (Continued on next page)

21  
22  
23  
24  
25

O7B3MEN6

Rebuttal - Mr. Richenthal

1 MR. RICHENTHAL: It's all happening. But Menendez  
2 apparently knows none of it, even though it's in his bedroom  
3 and the closet off his bedroom.

4 And it's so weird that literally his staff calls it  
5 weird. But in this version of the story, they just must have  
6 been mistaken.

7 You have to believe, you have to believe Menendez  
8 mentions a single case to Philip Sellinger not because of  
9 money. You have to believe he makes a call to Ted McKinney,  
10 not because of money. He's never called him before.

11 You have to believe he reached out to Gurbir Grewal,  
12 not because of money. The only time he ever reached out on a  
13 single case. You have to believe he reached out again in  
14 September, six months later, not because of money.

15 You have to believe and believe and believe.

16 You have to believe that he chose Esther Suarez, who  
17 had significant baggage, that is problems with media articles,  
18 when there are other plenty of diverse candidates. But not  
19 because Fred Daibes thought she would help him. Not for any  
20 reason at all. Because his own staff, remember, didn't want  
21 him to pick her. Right. You heard that. It's not good for  
22 him politically to pick her. Does it anyway.

23 Mr. Monteleoni calls those coincidences. He's right.

24 I'll stop in a moment. What else do you have to  
25 believe? You have to believe that when Robert Menendez says to

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Rebuttal - Mr. Richenthal

1 Philip Sellinger, the only thing worse than not having a  
2 relationship with the U.S. attorney is people thinking you have  
3 one and you don't.

4 He either didn't say that or he meant something having  
5 nothing do with Fred Daibes at all.

6 You have to believe that Menendez's website has no  
7 exceptions for any of these things. And he made exceptions for  
8 the people paying him and no one else. All, all entirely by  
9 accident.

10 You have to believe that when he called Gurbir Grewal,  
11 he had 95 truckers on his mind, when no one had talked to him  
12 about truckers, 95 or otherwise.

13 And you have to believe that everyone around him who  
14 he's trying to get to do things and who are resisting, Ted  
15 McKinney, Gurbir Grewal, Phil Sellinger, you have to believe  
16 they're all mistaken. Andrew Bruck turned to Grewal and said  
17 that was gross. You have to believe it wasn't. That they were  
18 wrong.

19 Ted McKinney was so horrified, he had to protect his  
20 staff. So did Gurbir Grewal. You have to believe they were  
21 wrong because these were all legitimate calls. That these  
22 senior officials are just all wrong.

23 And it's the same thing, by the way, with Wael Hana  
24 and Fred Daibes. You have to believe that Wael Hana promised  
25 the senator's girlfriend money from a monopoly he didn't yet



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Rebuttal - Mr. Richenthal

1 have and got the monopoly, then paid her through a fake  
2 contract, paid her mortgage, got her a Mercedes, for no reason  
3 at all.

4 You have to believe that was Fred Daibes started to  
5 give cash gifts and kilogram bars of gold. That the cash  
6 started approximately a week or later prior to the federal  
7 election, when there is no history he did anything like that at  
8 all. Certainly not because, at that point, Menendez for the  
9 first time in years could help. It's all a coincidence.

10 And you have to believe that that all kept going on  
11 for 5 years. Not once. 5 years.

12 That every time Menendez acts, he does it for someone  
13 paying him, but they're not connected. Every time Menendez  
14 gets paid from people, he doesn't put it on their Senate form.  
15 He has to say it's from my wife's family, when damn well he  
16 knows it's not, not because he's hiding it, for some other  
17 reason. You have to believe then believe and believe.

18 And you have to believe that he did these things for  
19 Egypt through his girlfriend and Hana, not because Hana was  
20 paying her, not because he forgot Wael Hana's phone number, but  
21 for some other legitimate reason. You have to believe he  
22 decided to give Egypt sensitive information about an embassy,  
23 not because he was on the take, and not because he was Egypt's  
24 agent.

25 I could keep going. You have to believe at the

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Rebuttal - Mr. Richenthal

1 pinnacle of his power, he decided to do all that for no reason  
2 at all.

3 Now, as I've said, we have the burden. But these  
4 things happened. Your job is to figure out why.

5 And in this version of the story, Robert Menendez,  
6 Wael Hana, and Fred Daibes are the unluckiest men in the world.  
7 And by the way, they're also the luckiest men in the world  
8 because Fred Daibes actually has Robert Menendez repeatedly try  
9 to get intervene in his case. Wael Hana gets a monopoly and  
10 gets to keep it. Jose Uribe, who pled guilty, gets Menendez to  
11 repeatedly try to interfere in the attorney general's case.

12 All these people are both lucky and unlucky at the  
13 same time. For 5 years.

14 Do you believe that? Do you believe that they're the  
15 unluckiest men in the world and the luckiest men in the world  
16 at the same time? Of course you don't. They're not the  
17 unluckiest men and the luckiest men.

18 Not an accident Robert Menendez kept helping people  
19 paying him and his girlfriend.

20 They're not unlucky men or lucky men. They're just  
21 men. Men in a bribery scheme. Men in a foreign agent scheme.  
22 There is nothing to celebrate in that. It's tragic. It's  
23 horrible. But it's true.

24 It is the only way, the only way to make sense of what  
25 happened. It's the only way to make sense of what you've seen

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1 for two months. It is the only way the evidence makes any  
2 sense at all. It is the only thing that fits your common  
3 sense.

4 I started this morning by saying to you that lawyers  
5 talk in court, but what speaks is the evidence. What it says  
6 here is crystal clear. They did it. They're guilty.

7 THE COURT: Thank you, Mr. Richenthal.

8 Ladies and gentlemen, I think we should take a  
9 10-minute break now. When we come back, I'll have my clerk  
10 meet you at the door, and he will hand you each a copy of the  
11 charge. And I then will explain to you what I'm going to do.  
12 But essentially, from 10 minutes to now until 5 o'clock, I'll  
13 be reading the charge to you. I'll pick it up again tomorrow  
14 morning. Then the remaining part of this trial is your  
15 deliberations. You will have this case for your deliberations  
16 before lunch tomorrow.

17 I'll see you in 10 minutes.

18 (Jury excused)

19 THE COURT: 10 minutes.

20 MR. WEITZMAN: Your Honor?

21 THE COURT: Yes, sir.

22 MR. WEITZMAN: I have an objection to note.

23 THE COURT: Yes, sir.

24 MR. WEITZMAN: And I'm considering the relief. Your  
25 Honor may recall that on I believe it was our last day of our

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1 defense case on behalf of Mr. Menendez.

2 THE COURT: You may be seated in the courtroom.

3 MR. WEITZMAN: We attempted to move in a number of  
4 documents, I don't have them in front of me, that showed that  
5 Senator Menendez attempted to have meetings or had meetings and  
6 calls with Gurbir Grewal about, in one instance a civil case,  
7 and another instance a case involving LGBTQ issues and  
8 discrimination issues.

9 The government objected on the grounds of 401 and 403.  
10 And yet, in their rebuttal summation, in his last salvo about  
11 being the unluckiest men in the world, he said that Senator  
12 Menendez reached out to Gurbir Grewal not because of money, but  
13 the only time he ever reached out on a single case. This is  
14 exactly the issue --

15 THE COURT: The only time.

16 MR. WEITZMAN: The only time Senator Menendez ever  
17 reached out to the New Jersey Attorney General Gurbir Grewal on  
18 a single case.

19 This is the exact issue we were trying to put evidence  
20 in. Government objected on 401 and 403 and they use it in the  
21 rebuttal, knowing we couldn't get the evidence in, to argue he  
22 must be the unluckiest man in the world and he's guilty.

23 THE COURT: Just a moment. Go ahead.

24 MR. WEITZMAN: This is, I mean, I think there is  
25 relief that's necessary. And one of the things I'm

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1 considering, your Honor, is surrebuttal evidence where your  
2 Honor admits it and we get to publish it to the jury.

3 THE COURT: Thank you.

4 MR. RICHENTHAL: That's frivolous. It's frivolous for  
5 two important reasons. One, it's plain as day I was talking  
6 about a single criminal case. That was the entire thrust of  
7 everything I said and that has nothing to do with the evidence  
8 to which Mr. Weitzman is referring.

9 But second, as the Court no doubt recalls, the defense  
10 conceded this. That evidence does not show he ever called  
11 Gurbir Grewal. What the evidence shows --

12 THE COURT: Let me think about that.

13 MR. RICHENTHAL: What that evidence shows, if it shows  
14 anything at all, and maybe Mr. Weitzman just misspoke, is a  
15 staffer of his talked about how he maybe should reach out.  
16 There is no evidence, including that evidence, that he ever in  
17 fact reached out. And as the Court also no doubt remembers,  
18 Mr. Grewal was cross-examined on this very point. That is,  
19 whether he had ever spoken to be Senator Menendez before about  
20 a single case. His answer was no. The defense asked had he  
21 spoken to Senator Menendez about other --

22 THE COURT: Just a moment. You said it was the  
23 testimony, the question to Grewal was had he ever spoken to  
24 Menendez before about a single case and his answer was no?

25 MR. RICHENTHAL: I don't remember the verbiage. But

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1 in substance yes, he was asked, and the answer was no. He then  
2 was asked --

3 THE COURT: Just a minute, sir. Yes, sir.

4 MR. RICHENTHAL: He was also asked had you spoken to  
5 him before on other matters. As the Court probably recalls,  
6 his answer was yes. That is policy type matters. I think  
7 there was evidence in the record about voting I think in the  
8 Dominican Republic.

9 So, the record is clear and the record is not in any  
10 way inconsistent with what Mr. Weitzman is talking about that  
11 at no time, ever, did Senator Menendez contact then General  
12 Grewal about a single case. And that's exactly what I said.

13 So even if that evidence had been put in, I still  
14 could have said the exact same thing.

15 THE COURT: All right. Mr. Weitzman, the  
16 representation here is that the question was had Grewal ever  
17 spoken to Menendez about a single case before or about a case  
18 before. An individual single, I don't know what the words are,  
19 and the answer is no.

20 It seems to me if that indeed is the testimony, then  
21 the fact that there's evidence of staffers saying let's talk to  
22 him about it or maybe we can talk to him about it or whatever  
23 that is, then I don't think your objection is well taken.

24 Do you have those exhibits that you're talking about?

25 MR. WEITZMAN: I do have the two exhibits. They are

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1 Defense Exhibit 1018 and Defense Exhibit 2165. And I disagree  
2 with Richenthal, although I will check the record regarding  
3 what Gurbir Grewal testified to. Whether it was a no or I do  
4 not recall.

5 But, let me tell you about these two defense exhibits.  
6 In one of them.

7 THE COURT: Can you hand them up to me.

8 MR. WEITZMAN: I can put them on the screen.

9 In defense Exhibit 1018, which is on the screen now,  
10 there is a discussion by Senator Menendez's staffer about how  
11 the senator's going to -- it's in the first clear bullet point.  
12 Second bullet point down. You said you would contact AG Grewal  
13 to pass along concerns particularly on the prosecution of hate  
14 crimes against members of the LGBTQ community and the  
15 disbursement of VOCA grant money.

16 THE COURT: I see that. Go up to the header and the  
17 caption so I can see what this is.

18 MR. WEITZMAN: This is what's titled a weekly report  
19 that staffers sent to Senator Menendez.

20 I'll be done in a moment, Mr. Richenthal.

21 THE COURT: Just a moment.

22 Yes, sir. What's the second one?

23 MR. RICHENTHAL: The second document is Defense  
24 Exhibit 2165 and this concerns some ongoing litigation  
25 regarding antisemitism in the form of discriminatory zoning

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1 laws. And the second bullet point again says you offered to  
2 call Attorney General Grewal to express interest in the matter  
3 and ask for an update. The point being --

4 THE COURT: Just a moment.

5 MR. WEITZMAN: It says AG Grewal and DoJ are  
6 investigating this issue.

7 THE COURT: Yes, sir.

8 MR. WEITZMAN: Now, the statement in the rebuttal  
9 concerns Senator Menendez's state of mind. It's about whether  
10 he's acting criminally in calling Attorney General Grewal for  
11 the -- for the first time ever in any case. Not a criminal  
12 case. In any case.

13 Now when I asked Attorney General Grewal about one of  
14 these documents, DX 1018, and we pulled it up, at transcript  
15 2791 and 2792:

16 "Q. Do you recall at some point whether at this meeting or at  
17 a prior meeting that you and Senator Menendez did have a  
18 conversation about issues with respect to civil rights?

19 "A. I do not."

20 THE COURT: Is he talking about the meeting with  
21 Menendez?

22 MR. WEITZMAN: Yes, but it's broadly at this meeting  
23 or a prior meeting was the question.

24 THE COURT: Read it to me again.

25 MR. WEITZMAN: "Do you recall at some point or at



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1 prior meeting that you and Senator Menendez did have a  
2 conversation about issues with respect to civil rights?

3 "A. I do not.

4 "Q. Do you recall Senator Menendez ever raising with you  
5 constituent concerns regarding hate crimes against members of  
6 the LGBTQ community?

7 "A. I don't have that recollection. No."

8 It is, this is why we offered it. This is why we offered  
9 these two documents. Because they go both to Senator  
10 Menendez's state of mind, which would rebut what Mr. Richenthal  
11 said in rebuttal, but it also undermines the testimony, because  
12 there is a fair inference that the jury can draw that if  
13 Senator Menendez was offered and was reminded to call Attorney  
14 General Grewal, he likely did do that. But the more important  
15 point --

16 THE COURT: You're asking for that inference without  
17 any proof in the record, including from Grewal, that in fact he  
18 had called him, or did call him.

19 MR. WEITZMAN: It's no different than the proofs that  
20 the government is asking about interpreting calls and so on and  
21 meetings and whether the meetings occurred, whether the calls  
22 occurred. For example, your Honor, they make a big stink, oh,  
23 Daibes must have known about the trial adjournment and he must  
24 have communicated it to Senator Menendez because you see here a  
25 text message. There is no evidence of a call. They're making

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1 those arguments for proof beyond a reasonable doubt. That's  
2 not the standard I need to meet.

3 THE COURT: I agree with that.

4 Do you have the reference that you were talking about  
5 to the question, if it exists, had you ever spoken to Menendez  
6 about a single case before? Answer: No. You were going to  
7 take a look at that.

8 MR. WEITZMAN: I have not found that. I will take a  
9 look for it, your Honor.

10 But I think the rebuttal argument, which is just one  
11 of many that they leaned on, was not a fair argument in light  
12 of the fact that they objected to this evidence. And now we  
13 need this evidence in the record as a surrebuttal.

14 THE COURT: I understand. Let me just ask this and  
15 then I'll hear from Mr. Richenthal. I take it the best  
16 argument you can make from which you want to argue inferences,  
17 I understand that the best argument you can make is the staff  
18 wrote him two memos of round ups of the week, telling him, that  
19 is Menendez, what he had done in the past week or said he was  
20 going to do.

21 One of which, 1018, says you said you'd contact  
22 Grewal. The other one, 2165, says essentially the same thing.  
23 You offered to call AG Grewal to express interest in this  
24 particular matter which was zoning litigation.

25 And you're saying from that, and you were stopped from

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1 introducing those, and from that you wish to infer, have the  
2 jury infer that he had called?

3 MR. WEITZMAN: So, your Honor, first of all, I think  
4 that it may be a fair inference because the documents don't say  
5 we suggest you do so. It suggests you want to do so. You  
6 offered and you said. So I think it's relevant in that  
7 respect. It's more probative. But more importantly, it does  
8 go to the state of mind issue, which is whether or not he  
9 called, he thought it was okay to call. That's the important  
10 point. That's why this was never a hearsay problem and that's  
11 why it overcame the 401 and 403 issues that the government  
12 objected to, because it goes to the state of mind, which is  
13 exactly the argument Mr. Richenthal is trying to undermine with  
14 his unluckiest man in the world argument that he spent 10  
15 minutes riffing on.

16 THE COURT: Let me hear from Mr. Richenthal.

17 MR. RICHENTHAL: I can say many things, but the  
18 simplest is where I started. If these were 100 percent in  
19 evidence, and I'm going to talk about why they were properly  
20 excluded. But if they were, I could say the exact same words  
21 in the exact same paragraph, for the same reason.

22 Neither of these exhibits, which are both hearsay,  
23 neither of these exhibits show either that a call in fact  
24 occurred, or even if one occurred, that it was about a single  
25 case. The first is demonstrably a policy issue.

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1 THE COURT: Just a moment. Turn to the second one  
2 first. It looks like it has to do with a doctor involving  
3 antisemitism and zoning changes.

4 MR. RICHENTHAL: Again, there is no evidence a call in  
5 fact happened. But in any event, yes, it refers to litigation.  
6 Not a single case. In fact, it's fairly apparent it's multiple  
7 cases. It talks about zoning laws plural. Litigation the  
8 Department of Justice is involved in. It refers to an  
9 investigation, that word is literally in the exhibit, an  
10 investigation that the DoJ is involved in.

11 My comment was very specific for a very good reason.  
12 Did he call about a single case. That's literally what I said.  
13 The answer is no. The defense is not disputing the factual  
14 accuracy of what I said. What they're doing is trying to  
15 relitigate your Honor's evidentiary ruling.

16 Your Honor's evidentiary ruling was right. These  
17 documents remain hearsay. Even if they're not hearsay, they  
18 should be excluded under 403 because they're about unrelated  
19 matters.

20 My statement was accurate. It would remain accurate  
21 if these were in the record, and therefore there is no relief  
22 to which the defense is entitled.

23 MR. WEITZMAN: This 2165 concerns a specific  
24 litigation. A specific case. It is a civil case, involving  
25 this man Dr. Richard Roberts. The plaintiffs are listed below.

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1 There are a summary of claims. It is a civil case that AG  
2 Grewal and DoJ are investigating for other parallel matters.

3 THE COURT: It is a little unclear, I don't think I  
4 have to decide whether it is a single case or not. It is a  
5 little unclear. The plaintiffs may be plaintiffs in two  
6 separate cases there, but we don't know. And the subject line  
7 is Re Dr. Richard Roberts and antisemitism in Jackson.

8 MR. WEITZMAN: I agree with Mr. Richenthal that we are  
9 trying to relitigate it. And the reason we're relitigating is  
10 because they shouldn't have been permitted to argue on rebuttal  
11 a point when evidence that we offered, they got excluded.  
12 That's the impropriety of what they did and it needs a remedy,  
13 your Honor.

14 MR. RICHENTHAL: Can I make one final point?

15 THE COURT: Yes.

16 MR. RICHENTHAL: This concept that the parties  
17 litigated --

18 THE COURT: I have an idea of what I'm going to do,  
19 but go ahead.

20 MR. RICHENTHAL: I would like to say for the record,  
21 the concept that the parties litigate about the Federal Rules  
22 of Evidence and argue about the record is not novel. That is  
23 how trials work. So there is nothing special in this  
24 particular circumstance.

25 The defense tried to get this in and the Court

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## Jury Charge

1 properly said no.

2 I stuck to the record and I made an argument in the  
3 record. Even if the defense were correct it was inconsistent,  
4 and the defense is not correct, there still would be no proper  
5 basis for relief.

6 THE COURT: I take the application of Mr. Menendez's  
7 attorneys to be for a surrebuttal. I'm denying that request.  
8 To the extent that there's evidence that has been presented to  
9 me, the record reflects that when asked had he ever spoken, had  
10 Grewal ever spoken to Menendez about a single case before, that  
11 the answer was no. That's not contraindicated by 1018 or 2165.  
12 They are hearsay. Each of them don't say that there was a call  
13 about a single case. It's at least one step removed. You said  
14 you'd contact, you said you would contact AG Grewal and you  
15 offered to call AG Grewal.

16 The evidentiary ruling was correct. These are too far  
17 afield, they're not directly contradictory of the evidence in  
18 regard to what Grewal said. Certainly in the scheme and the  
19 scope of hours of rebuttal, this does not rise to my directing  
20 a surrebuttal argument by Menendez attorneys. That's my  
21 ruling.

22 Take a few moments. I want to bring this jury in.

23 (Recess)

24 (Jury present)

25 THE COURT: Ladies and gentlemen of the jury, the

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## Jury Charge

1 summations are over. There are two parts of the trial left.  
2 My charge to you, and your deliberations.

3 It's already 10 after 4. So I'll read the charge for  
4 the next 50 minutes. I'll have to continue it tomorrow. If  
5 you're here at 9:30, we'll begin at 9:30. It will take a  
6 couple of hours to read the charge, all together. And as I  
7 said, my assumption is that you will have this case for your  
8 deliberation before lunch. When you come in in the morning, my  
9 deputy will take your lunch orders. From now on, every lunch,  
10 the court system will pay for your lunches.

11 I've handed out a copy of the charge to each of you.  
12 Don't feel under any obligation to be reading it and following  
13 along with me. You certainly can, that's why I've given you  
14 the charge. But people learn in different ways.

15 I used to never give the charge out, I mean in hard  
16 copy, because I thought what was important was that you should  
17 listen to me, rather than read just like a robot as I'm saying  
18 it. And then, I changed my view, and would give the charge  
19 out. And now, although I give the charge out, I explain to  
20 people, you can follow along as I'm reading it or not. It's  
21 however you think you learn the best, either from listening to  
22 me or reading while I say it aloud. There are a couple of  
23 things that are important. So, feel free to do either. You  
24 can put it down and just listen to me or to follow along.

25 Couple things that are important. One is don't single

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## Jury Charge

1 out any one word or phrase or sentence or even any one charge  
2 in this document. Consider the charges as a whole. Okay?  
3 When you're going through them.

4 And also, as there are certain themes that you'll see  
5 in these charges. And one of them, or something that  
6 overarches the charges, is always use your common sense. Use  
7 your life experience, use your good judgment when thinking  
8 about these things. Follow the instructions, but to me they  
9 all make sense. It is all logical. So, follow your good  
10 judgment, your life's experience, and your common sense.

11 All right. And each of you will have this with you  
12 when you begin your deliberations. For those of you who do  
13 wish to follow along, why don't you turn to the very beginning  
14 of the general charges.

15 It says I'm going to instruct you on the laws that you  
16 are going to apply to the facts in this case. You will  
17 determine the facts in accordance with these instructions.

18 Now you know that already, I've told you that at the  
19 beginning of the case.

20 You know you are vital to the administration of  
21 justice. And I hope you fully appreciate your importance in  
22 this process. It's a tradition and safeguard of our individual  
23 liberties that parties involved in criminal matters have a jury  
24 chosen from their community to decide questions of fact, and on  
25 that basis, render a verdict in the case.



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## Jury Charge

1 Now, you know what your role is and you know what my  
2 role is. It's your duty to decide whether or not the guilt of  
3 each defendant here has been proved beyond a reasonable doubt.  
4 You decide the fact issues here. I don't decide the facts.  
5 Our roles are very different.

6 You are the sole and exclusive judges of the facts.  
7 You pass on the weight of the evidence, you determine the  
8 credibility of the witnesses, you resolve any conflicts there  
9 are in the testimony. And you know, because you've been  
10 sitting here quite conscientiously, that there are conflicts in  
11 the testimony. And you draw whatever reasonable inferences you  
12 decide to draw from the facts as you determine those facts to  
13 be.

14 You must exercise this responsibility with complete  
15 fairness and impartiality. Your decision is to be based solely  
16 on the evidence or lack of evidence. Your decision cannot be  
17 influenced by bias, prejudice, or sympathy for or against any  
18 of the parties.

19 I'm going to instruct you on the law, that is, I'll  
20 tell you what the rules of law are that govern your  
21 deliberations, and tell you what the questions are that you  
22 must answer in reaching your verdict. You must accept the law  
23 as I state it to you. And you apply the law as I state it to  
24 you to the facts as you find them. Do not substitute your idea  
25 of what the law should be for what I tell you the law is. You

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## Jury Charge

1 decide the facts, ladies and gentlemen. Not I. But I decide  
2 the law. Not you. You are duty bound to accept the law as I  
3 state it to you.

4 And you know, because I told you this either yesterday  
5 or the day before, if any attorney has stated a legal principle  
6 during the course of the trial or in the summations that are  
7 different from any that I state to you, it's these instructions  
8 that you must follow.

9 Remember, a number of the lawyers said I expect Judge  
10 Stein will tell you, and then they went on. Now you're about  
11 to see what Judge Stein is going to tell you. And you apply  
12 what Judge Stein tells you to the facts as you find them.

13 As I said before, don't single out any single  
14 instruction or word or phrase or paragraph as alone stating the  
15 law. Consider these instructions as a whole. The result of  
16 your work is going to be the verdict.

17 I'm going to tell you some general principles about  
18 evidence, I'll explain the burden of proof. That's going to be  
19 one of the themes here, too. You know what the burden of proof  
20 is. It's on the government to prove the guilt of each  
21 defendant beyond a reasonable doubt. But I'll restate that as  
22 we go on. I'll tell you what the charges are, I'll explain the  
23 substantive law that applies, and I'll give you some concluding  
24 comments on your deliberations. And that will take place in  
25 midmorning tomorrow.

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## Jury Charge

1           You must perform your duty of finding the facts  
2 without bias or prejudice or sympathy to any party here. And  
3 you know there are four parties. The government to the United  
4 States is the prosecution, and we have Mr. Hana, Mr. Daibes,  
5 and Mr. Menendez. Each of those parties stand as equals before  
6 a jury and the courts of the United States.

7           You must disregard any feelings you may have about any  
8 of the defendant's race, religion, national origin, sex or age.  
9 It's also improper for you to consider any personal feelings  
10 you may have about the race, religion, national origin, sex or  
11 age of any witness or any lawyer or anyone involved in this  
12 case.

13           It also would be improper for you to allow any  
14 feelings you might have about the nature of the crimes charged  
15 to interfere with your decision-making process.

16           The fact that the government is a party and the  
17 prosecution is brought in the name of the United States does  
18 not entitle the government or the government's witnesses to any  
19 greater consideration than that given by you to any other  
20 party. By the same token, you have to give it no less  
21 consideration. The government and each defendant stand on  
22 equal footing before you.

23           Your verdict must be based solely on the evidence or  
24 the lack of evidence. That's another theme you're going to  
25 hear in these instructions.

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## Jury Charge

1 For the same reason, the personalities and the conduct  
2 of counsel are not in any way at issue. If you formed any  
3 opinions of any kind as to any of the lawyers in the case -- I  
4 assume you have -- whether favorable or unfavorable, whether  
5 you approved or disapproved of their behavior, those opinions  
6 must not enter into your deliberations.

7 Under your oath as jurors, you must not be swayed by  
8 sympathy. You are to be guided solely by the evidence. The  
9 crucial question you must ask yourselves as you sift through  
10 the evidence is, has the government proven the guilt of each  
11 defendant beyond a reasonable doubt? You alone decide whether  
12 the government has proven that each defendant is guilty of the  
13 crimes charged solely on the basis of the evidence and subject  
14 to the laws as I charge you.

15 It must be clear to you that once you let fear or  
16 prejudice or bias or sympathy interfere with your thinking,  
17 there is a risk that you will not arrive at a true and just  
18 verdict. If you have a reasonable doubt as to any of the  
19 defendant's guilt, you should not hesitate for any reason to  
20 find a verdict of acquittal as to the defendant you are  
21 considering.

22 On the other hand, if you should find that the  
23 government has in fact met its burden of proving a defendant's  
24 guilt beyond a reasonable doubt, you should not hesitate  
25 because of sympathy or any other reason to render a verdict of

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## Jury Charge

1 guilty for that defendant.

2 Similarly, you are not to consider the issue of what  
3 punishment, if any, will follow if you do find a defendant  
4 guilty. The issue of punishment is entirely for me.

5 Punishment should not enter into your decisions at all. Again,  
6 that's what I have to decide. You have to decide whether or  
7 not the government has proven the guilt of the defendant you  
8 are considering beyond a reasonable doubt.

9 You know the defendants have been indicted. You also  
10 know that an indictment is simply an accusation. It's not  
11 evidence. I told you that on the very first day. Each  
12 defendant here has pled not guilty to the charges against that  
13 defendant in the indictment. As a result of each defendant  
14 pleading not guilty, the burden is on the government to prove  
15 each defendant's guilt beyond a reasonable doubt.

16 This burden never shifts to the defendants for the  
17 simple reason that the law never imposes on a defendant in a  
18 criminal case the burden or duty of calling any witness or  
19 producing any evidence.

20 Again, these themes, they keep coming up. They're  
21 important.

22 The law presumes each defendant to be innocent of each  
23 of the charges against that defendant.

24 I instruct you, ladies and gentlemen, that you are to  
25 presume each defendant is innocent throughout your

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## Jury Charge

1 deliberations until such time, if ever, you as a jury are  
2 satisfied that the government has proven the defendant you are  
3 considering guilty beyond a reasonable doubt.

4 Each of the defendants here, ladies and gentlemen,  
5 begins this trial with a clean slate. The presumption of  
6 innocence itself is sufficient to acquit a defendant, unless  
7 you as jurors are unanimously convinced beyond a reasonable  
8 doubt of that defendant's guilt, after carefully and  
9 impartially considering all of the evidence in this case.

10 If the government has failed to sustain its burden as  
11 to the defendant you are considering, you must find that  
12 defendant not guilty.

13 The presumption of innocence was with each of the  
14 three defendants here nine weeks ago when this trial began. It  
15 remains with them even now as I speak to you, and it will  
16 continue with each defendant into your deliberations, unless  
17 and until you are convinced that the government has proven that  
18 defendant's guilt beyond a reasonable doubt.

19 Now, I've used the phrase "reasonable doubt" often in  
20 this trial when talking to you. I've said that the government  
21 must prove each defendant's guilt beyond a reasonable doubt.  
22 The question arises, what is a reasonable doubt? The words  
23 almost define themselves. A reasonable doubt is a doubt based  
24 upon reason and common sense. It is a doubt that a reasonable  
25 person has after carefully weighing all of the evidence. It is

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## Jury Charge

1 a doubt that would cause a reasonable person to hesitate to act  
2 in a matter of importance in his or her personal life.

3 Proof beyond a reasonable doubt must, therefore, be  
4 proof of such a convincing character that a reasonable person  
5 would not hesitate to rely and act upon it in the most  
6 important of his own affairs.

7 A reasonable doubt is not a caprice or a whim. It is  
8 not speculation or suspicion. And ladies and gentlemen, it is  
9 not an excuse to avoid the performance of an unpleasant duty  
10 and it's not sympathy.

11 In a criminal case, as you know, the burden is at all  
12 times on the government to prove guilt beyond a reasonable  
13 doubt. But the law does not require that the government must  
14 prove guilt beyond all possible doubt. That's not required.  
15 Proof beyond a reasonable doubt is sufficient to convict.

16 That burden never shifts to the defendant you are  
17 considering, which mean it is always the government's burden to  
18 prove each of the elements of the crimes charged beyond a  
19 reasonable doubt. And in these instructions, I'll be telling  
20 you what the elements of each charge are.

21 If, after fair and impartial consideration of all of  
22 the evidence, you have a reasonable doubt about the guilt of a  
23 defendant with respect to a particular charge against that  
24 defendant, you must find that defendant not guilty of that  
25 charge.

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## Jury Charge

1 On the other hand, if, after fair and impartial  
2 consideration of all of the evidence, you are satisfied of the  
3 defendant's guilt beyond a reasonable doubt, with respect to  
4 the charge you are considering, you should find that defendant  
5 guilty of that charge.

6 The fact that one party called more witnesses and  
7 introduced more evidence than the other does not mean that you  
8 should necessarily find the facts in favor of the side offering  
9 the most witnesses.

10 By the same token, you do not have to accept the  
11 testimony of any witness who has not been contradicted or  
12 impeached if you find the witness not to be credible. You also  
13 have to decide which witnesses to believe and which facts are  
14 true. To do this, you must look at all the evidence, drawing  
15 upon your own common sense and personal experience.

16 I'm going to discuss the criteria for evaluating  
17 credibility in a moment. Now, I want you to keep in mind that  
18 the burden of proof is always on the government, and the  
19 defendants are not required to call any witnesses or offer any  
20 evidence since they are presumed innocent.

21 All right. Now what's evidence? You know what  
22 evidence is because I told you what it was on the first day of  
23 trial. Evidence consists of the testimony of the witnesses and  
24 the exhibits that have been received into evidence, and they  
25 also are stipulations of the parties, which are agreements of



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## Jury Charge

1 the parties, that certain facts are true or agreements of the  
2 parties that a witness, if called, would have testified to  
3 whatever the stipulation says.

4 Those are the three types of evidence.

5 Now, there are two types of evidence that you can use  
6 in deciding the issues here. Direct evidence and  
7 circumstantial evidence. And I told you about that. And in  
8 fact, there was in at least one of the summations a reference  
9 to the difference.

10 Direct testimony is direct evidence of a fact that a  
11 witness says he or she personally saw, heard or observed or  
12 did. When a witness testifies of a fact issue which is known  
13 because of the witness's own knowledge, again, what he said or  
14 what he heard or what he did, that's direct evidence.

15 The other type of evidence is circumstantial evidence.  
16 You remember the example I gave you on the first day. I think  
17 there were references to it in the summations. Assume somebody  
18 comes into the back of the courtroom with a wet umbrella and  
19 you see it's wet. So you have direct evidence of a wet  
20 umbrella. You can infer from the fact of the wet umbrella to  
21 another fact that's not directly observed by you. It's raining  
22 out.

23 That's all there is to circumstantial evidence.  
24 Circumstantial evidence is evidence from which you can infer  
25 that something else is true. And if you remember, I think I

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## Jury Charge

1 pointed out, well, it's certainly logical and permissible to  
2 infer from the wet umbrella that it's raining out. That may  
3 not be the case. Somebody may have put it under a faucet in  
4 the restroom. But it's certainly permissible for you to infer  
5 that it's raining outside. That's all there is to  
6 circumstantial evidence. It's evidence that tends to prove a  
7 disputed fact indirectly from proof of other facts.

8 You infer on the basis of reason and experience and  
9 common sense from an established fact, the existence or  
10 non-existence of some other fact.

11 There you see another one of these themes.

12 Use your experience, use your common sense, use your  
13 good judgment when deciding these issues.

14 An inference is a deduction or conclusion that reason  
15 and common sense prompt a reasonable mind to draw from facts  
16 that have been proven by the evidence. Not all logically  
17 possible conclusions are legitimate or fair inferences. Only  
18 those inferences to which the mind is reasonably led or  
19 directed are fair inferences from direct or circumstantial  
20 evidence.

21 Whether or not to draw a particular inference is a  
22 matter exclusively for you, the jury, as are all determinations  
23 of fact. And you'll remember in the summations, the lawyers  
24 were asking you to draw differing inferences from the  
25 established facts. Each lawyer would suggest that the logical

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## Jury Charge

1 inference is X or logical inference was Y. You decide what the  
2 logical inferences are, and you decide what inferences to draw  
3 and what inferences not to draw.

4 Many material facts which are relevant to this case  
5 and are elements of the case, such as state of mind, are rarely  
6 susceptible to proof by direct evidence. Usually such facts  
7 are established by circumstantial evidence, such as a person's  
8 words, actions, and conduct as of the time of the occurrence of  
9 the events in question as well as any other surrounding facts  
10 and circumstances from that time and the reasonable inferences  
11 you draw.

12 Now, ladies and gentlemen, the law does not weight  
13 direct evidence more than circumstantial evidence. You decide  
14 what weight to be given on any piece of evidence, whether  
15 circumstantial or direct. You decide what pieces of evidence  
16 to accept, and those that you accept, you decide how much  
17 weight to put on them, whether to weigh something heavily or  
18 very little or not at all. You decide what pieces of evidence  
19 to reject. That's all for you to do.

20 The law doesn't say circumstantial evidence is better  
21 than direct evidence. Or for that matter, direct evidence is  
22 better than circumstantial evidence. That's not in these  
23 instructions. You decide what evidence to accept and what not  
24 to accept, and how much to weigh any piece of evidence that you  
25 do accept.

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## Jury Charge

1           The law simply requires that before convicting a  
2 defendant, you must be satisfied of that defendant's guilt  
3 beyond a reasonable doubt based on all the evidence in the  
4 case. So I told you what is evidence. I'm now going to tell  
5 you what is not evidence, and you know that too because I've  
6 told you all that on day one.

7           The indictment is not evidence. It's simply an  
8 accusation. You can't use it as evidence. The statements and  
9 the arguments made by the lawyers are not evidence. Their  
10 arguments are intended to convince you of what conclusions they  
11 want you to draw from the evidence or lack of evidence.

12           Listen to their arguments, weigh it, weigh their  
13 arguments, but don't confuse what they told you with evidence.  
14 Anything I've said is not evidence, ladies and gentlemen. As  
15 to what the evidence was, it's your recollection that matters.  
16 Not the recollections of the lawyers.

17           And I should tell you that once you start your  
18 deliberations, there will be a computer in your deliberation  
19 room that's been loaded with all of the evidence in this case.  
20 So you can call up any of the evidence at all on that computer.

21           I'm not permitted to let you have the gold bars or the  
22 cash or the jewelry. I'm quite serious. If you want to see  
23 any of that, then you just ask, and I'll explain how you send a  
24 note to me, and we'll bring you out and we'll show you those  
25 physical things.

O7bWmen7

Charge

1 THE COURT: But in terms of the paper exhibits, you'll  
2 have all of the exhibits loaded onto a computer.

3 What other things aren't evidence? You know, because  
4 I've told you, questions that lawyers ask are not evidence.  
5 It's the answers that are evidence. And you also remember,  
6 relatively early on, I said watch for assumptions that are in  
7 the questions when the question is never answered. The  
8 questions are never evidence. It's only the answers that are  
9 evidence.

10 From time to time I may have directed you to disregard  
11 an answer. Normally, that would be when a witness sort of  
12 over-spoke a lawyer when the lawyer was raising an objection  
13 which I sustained, and the witness may have given the answer.  
14 If I sustained the objection on some occasions, I would have  
15 told you to disregard that answer. You have to disregard that  
16 if I directed you to.

17 Don't draw any inference or conclusion for or against  
18 any party by reason of lawyers' objections or my rulings on  
19 such objections. The lawyers here not only have the right to  
20 raise objections, but I think they have an obligation to object  
21 to a question that they think is not legally permissible. And  
22 that is for me to decide whether it's legally permissible or  
23 not. But don't hold it against any lawyer that that lawyer was  
24 raising objections.

25 Nothing I say is evidence. Don't accept my statement

O7bWmen7

Charge

1 of what the evidence showed in place of your own recollection.  
2 Don't draw any inference from any of my rulings. My rulings  
3 were based on my legal training and were legal issues. And you  
4 know legal issues are not for you. I have no opinion of the  
5 facts of this case. You decide the facts of this case. I  
6 don't.

7 Don't try to seek that I have an opinion about any of  
8 the facts from any of my rulings. It's just not there.

9 Similarly, you saw a couple of times, although I think  
10 I would say the number of sidebar conferences were low, but  
11 sometimes we had sidebar conferences. Always those involved  
12 legal matters, so whatever was said at sidebar is not your  
13 concern. And in fact, I had my deputy put on that white noise  
14 to help reinforce that it's not your concern what we were  
15 saying. Those involved rulings of law and not matters of fact.

16 I may have questioned a witness myself from time to  
17 time. I did. Undoubtedly, those questions were intended to  
18 help clarify something that I thought may have been unclear.  
19 Don't draw any inference of any kind with respect to any  
20 question that I may have asked any of the witnesses. Don't  
21 infer that I have any views as to the credibility of any  
22 witness -- because that's an issue of fact for you too -- or I  
23 have any views as to the weight of the evidence or how you  
24 should decide any issue of fact. That's yours.

25 You'll also remember that I gave limiting instructions

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Charge

1 from time to time. I think usually in terms of hearsay, I'd  
2 say -- and you don't have to worry about what hearsay is;  
3 again, that's a legal issue for me. But I may have said this  
4 is being introduced not for the truth of the matter stated but  
5 for some other purpose. And you must follow those limiting  
6 instructions and consider that evidence only for the limited  
7 purpose for which I admitted it.

8 You have heard quite a bit of testimony about evidence  
9 seized in connection with searches that were conducted by law  
10 enforcement officers. Evidence obtained from those searches  
11 was properly admitted here and may be properly considered by  
12 you.

13 Whether you approve or disapprove of how that evidence  
14 was obtained must not enter into your deliberations. Ladies  
15 and gentlemen, I now instruct you that the government's use of  
16 the seized evidence is entirely lawful. You must, therefore,  
17 regardless of your own personal opinions about searches, give  
18 this evidence full consideration along with all the other  
19 evidence in the case in deciding whether the government has  
20 proved each defendant's guilt beyond a reasonable doubt.

21 I've already told you about stipulations.

22 A stipulation of fact is an agreement among the  
23 parties that a certain fact is true. You have to accept those  
24 as true, but you decide what weight to give those facts. And  
25 you've heard a stipulation of testimony, which is an agreement

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Charge

1 that, if called as a witness, a person would have given certain  
2 testimony. You must accept as true that the witness would have  
3 given that testimony. But again, you decide what weight to  
4 give that testimony.

5 Now, you saw a great deal of testimony here in the  
6 form of exhibits. I didn't mean testimony. You've seen a  
7 great deal of evidence that was in the form of exhibits.  
8 Certain exhibits were admitted into evidence. The lawyer  
9 propounding the evidence would say I move whatever it is. If  
10 it was a chart, it was a chart. And then I said whatever I  
11 said. If I said admitted, then that chart and summary is in  
12 evidence.

13 I've admitted those charts and summaries in place of  
14 or in addition to the underlying documents that they represent  
15 in order to save time and avoid unnecessary inconvenience. And  
16 you saw that. There were a number of charts in which I  
17 admitted the charts, and I also admitted the underlying  
18 documents, the documents that underlay the charts.

19 You should consider the charts and summaries that I  
20 admitted as you would any other evidence. But there were also  
21 charts and exhibits introduced as summaries that were  
22 introduced simply as visual aids, and they weren't evidence in  
23 and of themselves. They're graphic demonstrations summarizing  
24 some of the underlying evidence.

25 Sometimes it's easier or more convenient to use charts



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Charge

1 and summaries as opposed to placing all of the underlying  
2 documents in front of you. Again, it's up to you to decide  
3 whether the summary exhibits fairly and correctly reflect the  
4 underlying testimony and documents they purport to summarize.  
5 To the extent that the charts conform to what you determine the  
6 underlying facts to be, accept them. To the extent they differ  
7 from what you determine the underlying evidence to be, you can  
8 reject them. But one way or the other, the summary exhibits  
9 are not in and of themselves direct evidence -- that is, if I  
10 did not admit them as evidence. If I admitted them as  
11 evidence, then they're evidence.

12 That's why you have these two separate charges here.  
13 There were charts and summaries I admitted into evidence, and  
14 there were charts and summary I did not admit into evidence.  
15 In all cases, the underlying evidence and the weight which you  
16 attribute to that underlying evidence is what gives value and  
17 significance to these charts.

18 Now we turn to witness credibility. In the past nine  
19 weeks -- I think eight of testimony; there were a few days in  
20 the beginning when we were choosing a jury and there was no  
21 testimony, but eight or nine weeks of testimony -- you have had  
22 the opportunity to observe each of the witnesses. And I want  
23 to tell you, as I have said before, you, as a jury, have been,  
24 from outward appearances, very attentive to the witnesses and  
25 the testimony here. And I know that's appreciated by the

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Charge

1 parties and the lawyers and the Court.

2 Now you have to consider whether the witnesses were  
3 both truthful and accurate. A witness could believe that he  
4 was being truthful and still be mistaken and not able to recall  
5 facts accurately. Similarly, a witness could take the oath and  
6 intentionally testify falsely.

7 How do you decide who to believe and who not to  
8 believe, and of the evidence you believe, how do you decide  
9 what weight to put on it. Again, another one of the themes --  
10 it's just a matter of using your common sense, your judgment  
11 and your life's experience.

12 I don't know whether I told you this story -- again,  
13 you may not remember it; I would have told it at the very  
14 beginning -- about a seminar I went to sponsored by the Federal  
15 Judicial Center. Does that ring any bell?

16 No. OK. Well, you're about to hear it.

17 When I was first a judge, about 30 years ago, the  
18 Federal Judicial Center, which is the educational arm of the  
19 federal judiciary, sponsored a seminar, and there were a couple  
20 hundred judges who went. I was among them. And the topic of  
21 the seminar was how do you decide the credibility of witnesses,  
22 because there are certain trials -- not this -- where I, the  
23 judge, decide the credibility of the witnesses. Those are  
24 cases in which there is no jury. OK?

25 Here, as you know, you decide the credibility of the

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Charge

1 witnesses, but this was a course that was about three days,  
2 three or four days, to help judges determine how they can  
3 determine the credibility of witnesses. And I'm telling you I  
4 was very impressed. They had psychologists. They had actors  
5 who would act out a scenario, and then we had electronic  
6 clickers, which were a big deal back then, and we had to click  
7 and say who we thought was telling the truth and who we thought  
8 wasn't. And there were other judges who testified, and it was  
9 just fabulous. And at the end of those three days, I learned  
10 absolutely nothing.

11 I can't give you any tests. There are no magic  
12 formulas. Every day you decide who to believe and who not to  
13 believe -- when dealing with your family, when dealing with  
14 vendors, when going to school, in your job, you decide who to  
15 believe, who not to believe. You consider how well the  
16 witness, in such things -- I'm going to give you some things to  
17 consider, but again, no tests. It's good judgment, common  
18 sense, life's experience.

19 Among the things you should think about is consider  
20 how well the witness was able to observe or hear what he or she  
21 testified to. The witness may be honest but mistaken. How did  
22 the witness's testimony impress you? Did the witness appear to  
23 be testifying honestly and candidly? Were the witness's  
24 answers direct, or were they nonresponsive? How did the  
25 witness act? How did he testify? What was the strength or

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Charge

1 accuracy of his or her recollection? Do you think any outside  
2 factors affected that witness's credibility?

3 Consider the substance of the testimony. How does the  
4 testimony compare with other proof? Is it corroborated by  
5 other evidence here? Is it contradicted by other evidence? If  
6 there is a conflict, does any version appear reliable, and if  
7 so, which, if any, appears more reliable than others? Which  
8 appear not to be reliable?

9 Do you think a witness had a possible bias or  
10 relationship with a party? Such a bias or relationship does  
11 not necessarily make a witness unworthy of belief, but it's a  
12 factor you can consider. If a witness made statements in the  
13 past that are inconsistent with his testimony here during the  
14 trial, you can consider that when determining how much of the  
15 testimony, if any, to believe. You can consider whether the  
16 witness purposely made a false statement. Or do you think it  
17 was an innocent mistake? You can consider whether the  
18 inconsistency concerned an important fact or merely a small  
19 detail, as well as whether the witness had an explanation for  
20 the inconsistency. And if that witness did have an  
21 explanation, did that explanation make sense to you?

22 It's your decision, after reviewing all the evidence,  
23 whether to accept the testimony of any witness. And of course,  
24 you can accept parts and reject parts. You should give that  
25 testimony whatever weight you find it deserved.

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Charge

1           You also heard questioning of witnesses and evidence  
2 during the trial that witnesses have discussed the facts of  
3 this case and their testimony with lawyers before they appeared  
4 in court. You can consider that fact when evaluating a  
5 witness's credibility. But I want to tell you, ladies and  
6 gentlemen, that there's nothing unusual or improper about a  
7 witness meeting with lawyers before testifying in court so that  
8 the witness can be aware of what he or she is going to be  
9 questioned about, focus on those areas that he or she is going  
10 to be questioned about, and have the opportunity to review  
11 relevant exhibits that may be given to that witness by the  
12 lawyers before being questioned.

13           This type of consultation helps conserve your time and  
14 my time and everybody's time. In fact, I can tell you, in my  
15 experience, it would be unusual for a lawyer to call a witness  
16 without speaking with that witness in advance.

17           Again, the weight you give the nature or the fact of  
18 the witness's preparation and what inferences you draw from  
19 that preparation are matters completely within your ken, within  
20 your area here.

21           Now, you also heard testimony of law enforcement  
22 officers or those who work with law enforcement officers. The  
23 fact that a witness may be employed as a law enforcement  
24 official or work with law enforcement officials does not mean  
25 that his or her testimony is necessarily deserving of more or

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Charge

1 less consideration or greater or lesser weight than that of  
2 ordinary witnesses.

3 At the same time, it's quite legitimate for a defense  
4 counsel to try to attack the credibility of a law enforcement  
5 witness on the ground that that witness's testimony may be  
6 colored by a personal or professional interest in the outcome  
7 of the case.

8 It's for you to decide, ladies and gentlemen, after  
9 reviewing all the evidence, whether to accept the testimony of  
10 such a witness and to give that testimony whatever weight, if  
11 any, you find it deserves.

12 Now, I've admitted into evidence the acts and  
13 statements of others because those acts and statements were  
14 committed or made by persons who the government alleges were  
15 coconspirators of the defendants. And you heard references to  
16 that in the summation.

17 You can consider as evidence against a defendant the  
18 reasonably foreseeable acts and statements of those who you  
19 find were coconspirators of that defendant if made in  
20 furtherance of the conspiracy's common purpose. The reason for  
21 this rule has to do with the nature of the crime of conspiracy.  
22 A conspiracy is often referred to as a partnership in crime.  
23 Just as in other types of partnerships, when people enter into  
24 a conspiracy to accomplish an unlawful end -- that is, an  
25 agreement with two or more people to reach a certain result --

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Charge

1 each member of the conspiracy becomes an agent for the others  
2 in carrying out the conspiracy. Thus, the reasonably  
3 foreseeable acts, declarations, statements and omissions of any  
4 member of the partnership -- the conspiracy -- in furtherance  
5 of the common purpose of the conspiracy, are deemed under the  
6 law to be the acts of all of the members. And each member of  
7 the conspiracy is deemed responsible for such acts,  
8 declarations, statements and omissions of any other  
9 coconspirator made in the course of and in furtherance of the  
10 conspiracy.

11 In determining the factual issues before you, you may  
12 consider against the defendants any acts or statements made by  
13 any of the individuals who you find, under the standards I've  
14 already given you, to have been their coconspirators. This is  
15 so even if such acts were done and statements made in a  
16 defendant's absence and without that defendant's knowledge.  
17 But the burden of proving beyond a reasonable doubt that the  
18 conspiracy, in fact, existed and that the defendants were  
19 members of that conspiracy remains with the government.

20 Now, you remember another one of the instructions that  
21 I gave you many times, and ultimately I just reverted to a  
22 shorthand to save everybody's time. That's when you heard  
23 recordings of voice messages and things, telephone calls.  
24 Quite frequently, I admitted the telephone call and the  
25 recording as evidence, and then the same exhibit had a T number

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Charge

1 on it, and that was the transcript. And I told you the  
2 transcript was not evidence; it was just an aid to you to help  
3 you in understanding what was on the recording. And if you  
4 heard anything in the recording that was different from what  
5 the transcript was, you were to follow what you heard on the  
6 recording.

7 Portions of certain communications were in languages  
8 other than English. In respect to those conversations, I have  
9 admitted English-language translations of those communications  
10 as evidence. OK? When they were in a foreign language, it was  
11 the English translation that, in fact, was the evidence. You  
12 must accept the translations as evidence even if you understand  
13 whatever language was being spoken.

14 The transcripts for the English-language recordings,  
15 as I just told you, are not themselves evidence. You should  
16 draw your own conclusions as to what was heard in the  
17 recordings admitted into evidence. And as I just told you, if  
18 you think you heard something different from what appears in  
19 the transcript of the English-language recording, what you  
20 heard controls.

21 Now, among many of the exhibits that were introduced  
22 into evidence were redactions. Redactions are simply parts of  
23 the document that are taken out or covered. They were covered  
24 because whatever's under them had no role to play in your  
25 deliberations. Don't concern yourself with what was covered.



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Charge

1 Concern yourself only with the part of the item that was  
2 admitted into evidence.

3 Now, certain witnesses were also allowed by me to  
4 express their opinions about matters that are at issue. A  
5 witness may be permitted to testify to an opinion on those  
6 matters about which that witness has special knowledge, skill,  
7 experience and training. The testimony was given to you on the  
8 idea that someone who is experienced and knowledgeable in the  
9 particular field -- scientific or other specialized areas --  
10 should be able to give opinions about the areas in which they  
11 are expert to assist you in understanding the evidence or in  
12 reaching an independent decision on the facts. And you'll  
13 remember when somebody asked that a witness be qualified as an  
14 expert, I turned to you and said, all that means, ladies and  
15 gentlemen, is that this witness can answer opinion questions.

16 In weighing the opinions of these experts, you can  
17 consider the witness's qualifications, opinions, reason for  
18 testifying, and all of the other things that ordinarily apply  
19 when deciding whether or not to credit a witness's testimony.  
20 Give that opinion testimony whatever weight, if any, you find  
21 it deserves in light of all the evidence here, but don't accept  
22 opinion testimony merely because I allowed that witness to give  
23 his or her opinion. And again, another one of the themes,  
24 don't allow that opinion to substitute for your own common  
25 sense, life's experience and good judgment. Again, another

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Charge

1 theme. The determination of facts are solely for you, ladies  
2 and gentlemen.

3 You also have heard testimony from one or more  
4 government witnesses who have pled guilty to charges arising  
5 out of the facts that are related to the issues here. You  
6 remember Mr. Uribe pled guilty. You are instructed that you  
7 are to draw no conclusions or inferences of any kind about the  
8 guilt of the defendants on trial from the fact that such a  
9 witness pled guilty to a similar charge. The decision of the  
10 witness to plead guilty was a personal decision on the part of  
11 that witness, and he or she made it on the basis of his or her  
12 own guilt. You can't use that guilty plea in any way as  
13 evidence against the defendants here. That guilty plea went to  
14 the issue of his guilt.

15 Now, the law allows the use of testimony of  
16 cooperators or accomplice witnesses. And you saw Mr. Uribe  
17 testify here. There's nothing improper about the government's  
18 use of such a witness; that is, a cooperating witness. In  
19 fact, in federal courts, the law is that the testimony of a  
20 cooperating or accomplice witness in itself may be enough for  
21 conviction if the jury believes that that testimony proves  
22 guilt beyond a reasonable doubt.

23 Accordingly, the testimony of accomplice or  
24 cooperating witnesses was properly before you. The government  
25 argues, as it is entitled to do, that if such evidence could

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Charge

1 not be used, there would be many cases in which there was real  
2 guilt and convictions could not be obtained. The testimony of  
3 cooperating or accomplice witnesses should be examined by you  
4 with greater scrutiny because such witnesses may believe it's  
5 in their interests to give testimony favorable to the  
6 government, and the fact that a witness is an accomplice or  
7 cooperating witness can be considered by you in evaluating that  
8 witness's credibility, but it doesn't follow that simply  
9 because someone has admitted to participating in crimes that he  
10 or she is incapable of giving a truthful version of what  
11 happened.

12 Like the testimony of other witnesses, accomplice  
13 witness testimony should be given the weight it deserves in  
14 light of the facts and circumstances before you, taking into  
15 account the witness's demeanor, candor, the strength and  
16 accuracy of that witness's recollection, their background and  
17 the extent to which their testimony is or is not corroborated  
18 by other evidence in the case.

19 You may consider whether an accomplice witness has any  
20 interest in the outcome of the case and, if so, whether it has  
21 affected that witness's testimony. For example, you may  
22 consider whether the cooperating witness has received any  
23 benefits or promises of benefits from the government or has  
24 benefitted in any way from his cooperation with the government  
25 that would motivate him to testify falsely in court.

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Charge

1           You've also heard testimony of one or more agreements  
2       between the government and the accomplice witnesses. I caution  
3       you that it is no concern of yours why the government entered  
4       into an agreement with a particular witness. Your sole concern  
5       is whether a witness has given truthful testimony here before  
6       you.

7           In evaluating the testimony of these witnesses, ask  
8       yourselves whether these witnesses would benefit more by lying  
9       or more by telling the truth. Was there testimony made up in  
10      some way because they believed or hoped that they would somehow  
11      receive favorable treatment by testifying falsely? Or did they  
12      believe that their interests would be best served telling you  
13      the truth? If you believe that a witness was motivated by  
14      hopes of personal gain, was the motivation one that would cause  
15      them to lie or one that would cause them to tell you the truth?  
16      Did the motivation color that witness's testimony?

17          If you find the testimony by such a witness -- or any  
18      witness, for that matter -- is false, reject it. You know  
19      that.

20          If, however, after giving cautious and careful  
21      consideration to the testimony and witness's demeanor and  
22      everything else I've been talking about, and you're satisfied  
23      that that witness told the truth, then accept it and act  
24      accordingly. As with any witness, the issue of credibility  
25      isn't usually decided on an all-or-nothing basis, although it

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Charge

1 may be. That's up to you. If you find a witness testified  
2 falsely in one part, you're still entitled to accept that  
3 testimony in other respects, or for that matter, you can throw  
4 it all out. It's an issue of fact, so it's up to you.

5 You've also heard testimony that one or more  
6 accomplice witnesses or cooperating witnesses pled guilty to  
7 certain crimes that are related to the allegations here. You  
8 are to draw no conclusions, as I've told you, or inferences of  
9 any kind about the guilt of the defendants on trial here from  
10 the fact that a cooperating witness pled guilty to similar  
11 charges. The decision of a witness to plead guilty is a  
12 personal decision that that witness made about his own guilt  
13 and may not be used by you in any way as evidence against the  
14 defendant on trial.

15 Now, it's 5 o'clock, so let me end with this thought,  
16 and I've told you this several times.

17 During the trial, you've heard testimony from  
18 witnesses that the government did or did not use specific  
19 investigative techniques. You can consider these facts in  
20 deciding whether the government has met its burden of proof,  
21 because you have to look to all of the evidence, or lack of  
22 evidence, when you're deciding whether a defendant is guilty.  
23 But I also instruct you that there's no legal requirement that  
24 the government use any specific investigative technique to  
25 prove its case.

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Charge

1           You know the government is not on trial here. Law  
2 enforcement techniques are not your concern. I've said that  
3 several times. Your concern is to determine whether or not on  
4 the evidence, or lack of evidence, each defendant's guilt has  
5 been proved beyond a reasonable doubt. And you know that as  
6 well because I've told you that several times.

7           Enjoy the evening. Don't discuss the evidence. Keep  
8 an open mind. If you're all here at 9:30, we'll pick up the  
9 charge at that point. And again, our expectation is you'll  
10 have this case before lunch.

11           Enjoy the evening.

12           (Jury not present)

13           THE COURT: All right. I'll see everyone at 9:30  
14 tomorrow.

15           I want to briefly see the lawyers at sidebar.

16           (At sidebar)

17           THE COURT: I just wanted to let you know that juror  
18 No. 9 was concerned, I guess, about why I was questioning him.  
19 He told my deputy the following, and it does not change my  
20 ruling. He said he was trying to think about why I could have  
21 been asking that question, and he did remember that on one day  
22 he'd left his notepad in the jury deliberation room, so he  
23 didn't have it. And he turned to the juror next to him and  
24 said, can I have a page out of your notepad, and she gave it to  
25 him. That's the end.

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1 Thank you. See you tomorrow.

2 MR. LUSTBERG: Thank you, Judge.

3 (Adjourned to July 12, 2024, at 9:30 a.m.)

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